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U.N. Sanctions in Haiti: A Contradiction Under Articles 41 and 55 of the U.N. Charter

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Felicia Swindells

Abstract

This Note analyzes the United Nations' use of sanctions in Haiti to draw lessons for the future use of sanctions and argues that there is an inherent tension in the Charter between measures called for under Article 41 and the United Nations' obligations under Article 55. Part I of this Note presents the background and the legal bases for U.N. sanctions. Part I also discusses the adoption of measures to solve Haiti's crisis outside of and within the Chapter VII framework of the U.N. Charter. Part II examines the debate surrounding the use of sanctions to solve Haiti's crisis. Part III argues that the U.N. imposed sanctions undermined the organization's mandate to promote Haiti's economic and social development pursuant to Article 55 of the Charter. Part III also suggests that due to the lack of enforcement alternatives available to the United Nations to maintain international peace and security, the United Nations needs to improve its procedural mechanisms for the implementation and monitoring of sanctions. This Note concludes that, while sanctions are viable policy tools, the United Nations must apply the sanctions within the limits set out in Article 55 of the U.N. Charter.

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*Felicia Swindells**

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In recent years, the Security Council has called, with increasing frequency, for economic sanctions as an enforcement tool under Chapter VII. The universal character of the United Nations makes it a particularly appropriate body to consider and oversee such measures. Consideration needs to be given, however, to making these sanctions more effective in achieving the goal of modifying the behaviour of those targeted, while limiting the collateral damages. There is also a need to address the broader humanitarian and economic effects of sanctions, as well as objective criteria in their application and for their termination.¹

INTRODUCTION

The United Nations' imposition of sanctions on Haiti in June 1993² and May 1994,³ represented a culmination of years of foreign policy calculations on the part of the United Nations, the United States, and the international donor community at large.⁴ Sanctions also constituted another attempt to rectify Haiti's latest crisis, the overthrow of the country's first democratically-elected president by the Haitian military.⁵ The *coup d'état* reflected nearly two hundred years of domestic social, political, and economic warfare.⁶ Sanctions were the only tools available

1. *Renewing the United Nations: A Programme for Reform, Report of the Secretary General*, U.N. GAOR, 51st Sess., Agenda Item 168, at 36, U.N. Doc. A/51/950 (1997) [hereinafter *Renewing the United Nations*].

2. S.C. Res. 841, U.N. SCOR, 3238th mtg., U.N. Doc. S/RES/841 (1993).

3. S.C. Res. 917, U.N. SCOR, 3376th mtg., U.N. Doc. S/RES/917 (1994).

4. See UNITED NATIONS, LES NATIONS UNIES ET HAÏTI 1990-1995, at 3-6, 10-37, U.N. Sales No. F.96.I.11 (1996) (outlining actions undertaken by United Nations, United States, and international donor community) [hereinafter LES NATIONS UNIES ET HAÏTI].

5. See *id.* at 19-20 (discussing *coup d'état* that took place on September 29-30, 1991). General Raoul Cédras and Commander Michel François led the overthrow of Aristide. *Id.* at 20.

6. Sidney W. Mintz, *Can Haiti Change?*, 74 FOREIGN AFF. 1, at 73, 73 (1995). Haiti's national and international crises have been in the making since the country's foundation as an independent sovereign state in 1804. *Id.* Four groups of actors heavily impacted the course of Haiti's development as a nation-state: the army, the french-speaking elite, the Catholic Church and Voodoo, and the Kreyol-speaking poor. PATRICK BELLEGARDE-SMITH, *HAÏTI: THE BREACHED CITADEL* 70 (1990); see ALEX DUPUY, *HAÏTI IN THE WORLD ECONOMY* (1989) (explaining Haiti's development from socio-economic standpoint and discussing roles of four actors). Historically, Haitian governments were weak and up until the 1990 elections the Haitian army and elite were controlled by Haitian politics. DUPUY, *supra*, at 117-118. Furthermore, since its independence in 1804 Haiti has had 44 rulers or presidents, over three-quarters of whom were either killed or overthrown. *Id.* at 119. Haiti had the added burden of a small elite dominat-

to the United Nations short of the use of force and military intervention to resolve Haiti's quagmire.⁷ Ultimately, the sanctions did not achieve their objective in Haiti, to remove the military dictatorship.⁸

The implications of Haiti's highly stratified society, violent past, inadequate or nonexistent government, and the resulting coup comprised a new and unanticipated scenario for the United Nations.⁹ Haiti's sanctions episode, furthermore, came at a time when the United Nations was focusing on peace and security issues.¹⁰ With the number of failed states on the rise,¹¹

ing the rest of the Haitian population, with little interest in promoting a national identity, economy, and a more equal society. Mintz, *supra*, at 79, 81-82. The elite pursued a subtle form of plundering, encouraging the economy for their own benefit without investing in anything that would benefit overall society. *Id.* at 86; see generally DUPUY, *supra* (discussing emergence and evolution of Haitian elite). The dire economic, social, and political circumstances created huge waves of refugees, including the boat people. BELLEGARDE-SMITH, *supra*, at 124-125. Boat People refers to thousands of Haitians who fled Haiti in the 1980s and 1990s in makeshift boats in direction of the United States. Rapporteur Spécial de la Commission des Droits de L'Homme, *Note du Secrétaire Générale à l'Assemblée Générale, Transmettant le Rapport Provisoire Etabli par le Rapporteur Spécial de la Commission des Droits de l'Homme sur la Situation des Droits de l'Homme en Haïti*, U.N. Doc. A/47/621 (1992) in LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 229, 235.

7. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 4 (asserting that international community had eliminated possibility of using force to remove military *de facto* government and was therefore left with sanctions as only means with which to resolve Haiti's crisis). See Miroslav Nincic and Peter Wallenstein, *Economic Coercion and Foreign Policy*, in DILEMMAS OF ECONOMIC COERCION: SANCTIONS IN WORLD POLITICS 1, 3-4 (Miroslav Nincic and Peter Wallenstein, eds., 1983) (describing economic sanctions as belonging to continuum of foreign policy instruments distinguished by coerciveness, with economic sanctions lying between diplomatic bargaining and use of military force).

8. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 4-5 (positing that sanctions seemed more effective as threats than as actual policy tools). Cf. Larry Rohter, *Haitian Military Rulers Agree to Leave; Clinton Calls Off Plans for US Invasion*, N.Y. TIMES, Sept. 19, 1994, at A1, A8 (discussing settlement negotiated with Haitian *junta* by former President Carter, Senator Nunn, and former U.S. Chief of Staff Colin Powell); Larry Rohter, *2,000 Troops Land Without Opposition and Take Over Haiti's Ports and Airfields*, N.Y. TIMES, Sept. 20, 1994, at A1 (reporting on arrival of American troops to enforce negotiated settlement). Former President Carter had established a reputation as an effective foreign policy trouble shooter, negotiating, for instance, with regimes in North Korea and Sudan. See Douglas Brinkley, *Jimmy Carter's Modest Quest for Global Peace*, 74 FOREIGN AFF. 6, 90, 92 (1995) (listing disputes former President Carter mediated).

9. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 3 (stating that United Nations embarked on an unprecedented journey when it responded to crisis in Haiti). See Madeleine K. Albright, *International Law Approaches the Twenty-First Century: A U.S. Perspective on Enforcement*, 18 FORDHAM INT'L L.J. 1595, 1602 (1995) (discussing uniqueness of Haiti scenario).

10. See BOUTROS BOUTROS-GHALI, AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACE-KEEPING, U.N. Doc. A/47/277-S/24111 (1992) *reprinted in* AN

the United Nations is fulfilling roles its founding member states may not have anticipated in 1945, but ultimately provided for in varying degrees under the U.N. Charter.¹² From 1991 to 1994, United Nations' activities in Haiti included election monitoring,¹³ the use of a regional arrangement, the Organization of American States ("OAS"),¹⁴ human rights monitoring,¹⁵ preven-

AGENDA FOR PEACE 1995, U.N. Sales No. E.95.I.15 (2nd ed. 1995) [hereinafter *AN AGENDA FOR PEACE*] (setting out ways to strengthen and make more efficient U.N.'s capacity in preventive diplomacy, peacemaking, and peace-keeping fields).

11. See BOUTROS BOUTROS-GHALI, SUPPLEMENT TO AN AGENDA FOR PEACE: POSITION PAPER OF THE SECRETARY-GENERAL ON THE OCCASION OF THE FIFTIETH ANNIVERSARY OF THE UNITED NATIONS at ¶ 8-12, U.N. Doc. A/50/60-S/1995/1, *reprinted in* AN AGENDA FOR PEACE 1995, U.N. Sales No. E.95.I.15 (2nd ed. 1995) [hereinafter *SUPPLEMENT TO AN AGENDA FOR PEACE*] (discussing rise in number of intra-state conflicts since end of Cold War).

12. See *id.* at ¶ 8-22 (discussing emergence of new role for United Nations including promotion of national reconciliation and re-establishment of effective government).

13. G.A. Res. 45/2, U.N. GAOR, 45th Sess., Agenda Item 154, U.N. Doc. A/45/2 (1990), *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 150-151. United Nations Observer Group for the Verification of Elections in Haiti ("ONUVEH") represented the second time in the United Nations' history that a government had requested that the United Nations monitor elections. United Nations Department of Public Information, *United Nations Electoral Assistance to Haiti*, U.N. Doc. DPI/1120 (1991), at 2 [hereinafter *Electoral Assistance*]. The first instance of such a request came when Nicaragua asked for U.N. monitors to monitor the 1990 Nicaraguan election. *Id.* Ertha Pascal Trouillot, the head of the then provisional government of Haiti, requested in the spring of 1990 that an observer group supervise the forthcoming presidential and legislative elections. *Id.* In October of 1990, the General Assembly adopted Resolution 45/2, asking the Secretary General to "provide the broadest possible support to the Government of Haiti." *Note by the Secretary-General: Special Economic and Disaster Relief Assistance, Electoral Assistance to Haiti*, U.N. GAOR, 45th Sess., Agenda Items 86 and 154 at 1, U.N. Doc. A/45/870/Add.1 (1991).

14. See OAS Ministers of Foreign Affairs, MRE/RES. 1/91 (1991) (condemning overthrow and calling on all member states to suspend economic, financial and commercial ties, and any aid and technical assistance and cooperation except that provided strictly for humanitarian purposes); see OAS Ministers of Foreign Affairs, MRE/RES. 2/91 (1991) (urging member states to freeze Haiti's assets, to impose trade embargo, and eventually to set up civilian mission in Haiti to monitor human rights abuses). The Organization of American States ("OAS") also proposed to forward the resolution to the United Nations and to encourage the United Nations to request that its members adopt the same measures. *Id.*

15. See G.A. Res. 47/20B, U.N. GAOR, 47th Sess., Agenda Item 22, U.N. Doc. A/RES/47/20 (1993), *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 290-291 (authorizing participation of United Nations in OAS monitoring mission); see *Rapport du Secrétaire Générale à l'Assemblée Générale, Recommandant la Création de la Composante ONU d'une Mission Civile Internationale Mixte ONU/OEA en Haïti*, U.N. GAOR, U.N. Doc. A/47/908 (1993), in LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 258-275 (providing framework for sending in monitoring force to monitor human rights violations). Initially referred to by the acronym OEA/DEMOC, the mission became known as the Mis-

tive diplomacy,¹⁶ sanctions,¹⁷ military intervention,¹⁸ and state-

sion Civile en Haiti ("MICIVIH") once the United Nations took over. *Mission Civile Internationale en Haiti, OEA/ONU: Termes de Référence* (on file with the *Fordham International Law Journal*) [hereinafter *Termes de Référence*]. Under Chapter VIII of the U.N. Charter, specifically Articles 52 and 53, the United Nations has a duty to make full use of the regional organizations primarily for the maintenance of international peace and security. U.N. CHARTER arts. 52, 53. The United Nations left most of the burden of finding a solution to the Haitian crisis on the OAS, and initially only passed a few General Assembly Resolutions condemning the coup or encouraging support for the OAS sanctions. See, e.g., G.A. Res. 46/7, U.N. GAOR, 46th Sess., Agenda Item 145, U.N. Doc. A/46/7 (1991), reprinted in *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 204 (proclaiming that U.N. Secretary General would provide support OAS Secretary General sought). One of the more active measures the United Nations adopted prior to imposing sanctions was to participate, at the behest of Aristide, in the OAS' human rights monitoring mission as part of a political solution to reinstate Aristide. G.A. Res. 47/20B. The U.N. General Assembly allocated US\$19.1 million to the mission and allowed 130 U.N. monitors to join 130 OAS monitors in Haiti. *General Assembly Approves Joint UN/OAS Civilian Mission to Haiti*, U.N. GAOR, 47th Sess., 100th plen. mtg., Press Release, U.N. Doc. GA/8482 (1993). The objective of the mission was to monitor and report any violations of human rights laid out in the Haitian Constitution, or any other international human rights treaty to which Haiti was a party, to the relevant international organizations while also making recommendations to the Haitian authorities who were committing abuses. *Termes de Référence*.

16. See G.A. Res. 47/20A, U.N. GAOR, 47th Sess., Agenda Item 22, U.N. Doc. A/RES/47/20 (1992), reprinted in *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 247-48 (following which U.N. Secretary-General Boutros Boutros-Ghali appointed Special Envoy Dante Caputo in December 1992 to pursue solution to Haiti's political crisis through diplomatic talks). In cooperation with the OAS, the United Nations and its Special Envoy explored a negotiated political settlement to try and resolve Haiti's political crisis between President Jean-Bertrand Aristide and the *de facto* military authorities. See, e.g., *Letter from Raoul Cédras, Commander-in-Chief of the Haitian Armed Forces to the Special Envoy* (Jan. 16, 1993), reprinted in *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 252-253 (discussing meeting between Special Envoy, Dante Caputo, and Haitian Commander-in-Chief, Raoul Cédras, to try and find solution to Haitian crisis through constructive dialogue); *Letter from De Facto Haitian Prime Minister, Mr. Marc Bazin, to the Special Envoy* (Jan. 17, 1993), reprinted in *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 253 (mentioning offer Special Envoy made to *de facto* and *de jure* Haitian governments to facilitate dialogue between them through the auspices of United Nations and OAS to resolve Haiti's political crisis). By June of 1993, when the United Nations imposed mandatory sanctions on Haiti, Caputo had been trying for seven months to broker an agreement with the military. United Nations Department of Public Information, *LES NATIONS UNIES ET LA SITUATION EN HAÏTI* 5 (1995) [hereinafter *LA SITUATION EN HAÏTI*]. Once the United Nations decided to impose the sanctions on Haiti pursuant to Resolution 841 (1993) and showed its resolve, the *de facto* Haitian military government succumbed immediately and signed an agreement on Governors Island in New York on July 3, 1993. *Governors Island Agreement*, in *Report of the Secretary General: The Situation of Democracy and Human Rights in Haiti*, General Assembly, 47th Sess., Agenda Item 22, at 2-5, Security Council, 48th Sess., at 2-5, U.N. Doc. A/47/975-S/26063 (1993) [hereinafter *Governors Island Agreement*]. The Agreement, a political truce, set up a ten-step plan to restore Democracy in Haiti, primarily by resolving the Parliamentary crisis underway in Haiti at the time, allowing the selection and ratification of a Prime Minister,

building.¹⁹

This Note analyzes the United Nations' use of sanctions in Haiti to draw lessons for the future use of sanctions²⁰ and argues that there is an inherent tension in the Charter between measures called for under Article 41²¹ and the United Nations' obligations under Article 55.²² Part I of this Note presents the back-

and preparing the way for the return of Aristide. *Id.* Until the Security Council adopted Resolution 940 on July 31, 1994, to allow for the use of a multinational force to reinstate President Aristide, the Governors Island Agreement was hailed as the only framework in which to solve Haiti's crisis. See S.C. Res. 940, U.N. SCOR, 3413th mtg., U.N. Doc. S/RES/940 (1994) (citing Governors Island Accord as framework to reinstate democracy in Haiti).

17. S.C. Res. 841, *supra* note 2; S.C. Res. 917, *supra* note 3.

18. See S.C. Res. 940, *supra* note 16, ¶ 4 (providing for multinational force to remove the *de facto* military authorities and to reinstate President Aristide). The Resolution allowed for the use of all necessary means to achieve its objectives. *Id.* Pursuant to Resolution 940, a multinational force led by the United States, landed in Haiti on September 19, 1994. LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 64.

19. *Governors Island Agreement*, *supra* note 16. The fifth step of the Governors Island Agreement provided for the U.N. to assist in the modernization of the Haitian Armed Forces and the establishment of an official police force. *Id.* at ¶ 5. To this end the Agreement recommended that a combined police monitoring and military personnel U.N. force, U.N. Mission in Haiti ("UNMIH") be deployed in Haiti by the U.N. member states. *Id.* Security Council Resolution 867 (1993) approved the deployment of UNMIH in Haiti by October 1993. S.C. Res. 867, U.N. SCOR, 3282nd mtg., U.N. Doc. S/RES/867 (1993). The deployment never occurred but the Security Council eventually expanded UNMIH's mandate and size to create the U.N. peacekeeping force in Haiti. S.C. Res. 940, *supra* note 16. The size of UNMIH decreased and a smaller force, the Mission d'Appui des Nations Unies en Haïti (MANUH) succeeded UNMIH in July 1996. S.C. Res. 1063, U.N. SCOR, 3676th mtg., U.N. Doc. S/RES/1063 (1996), *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 613-614. MANUH's mandate consisted of training a professional Haitian police force and of helping other U.N. Agencies to reinforce Haitian government institutions and to promote economic development. *Id.*

20. See SUPPLEMENT TO AN AGENDA FOR PEACE, *supra* note 11, at 8 (reporting that continuing rise in number of sanctions regimes imposed by Security Council). The number of sanctions regimes imposed by the Security Council increased from one as of January 1988, to two as of January 1992, to seven as of January 1994. *Id.*

21. U.N. CHARTER art. 41. Article 41 states:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Id.

22. U.N. CHARTER art. 55. Article 55 states:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

ground and the legal bases for U.N. sanctions. Part I also discusses the adoption of measures to solve Haiti's crisis outside of and within the Chapter VII²³ framework of the U.N. Charter. Part II examines the debate surrounding the use of sanctions to solve Haiti's crisis. Part III argues that the U.N. imposed sanctions undermined the organization's mandate to promote Haiti's economic and social development pursuant to Article 55 of the Charter. Part III also suggests that due to the lack of enforcement alternatives available to the United Nations to maintain international peace and security, the United Nations needs to improve its procedural mechanisms for the implementation and monitoring of sanctions. This Note concludes that, while sanctions are viable policy tools, the United Nations must apply the sanctions within the limits set out in Article 55²⁴ of the U.N. Charter.

I. SANCTIONS: COLLECTIVE MEASURES

Although the U.N. Charter permits the use of collective sanctions as a means to promote international peace and security, the United Nations only recently began to actively use collective sanctions.²⁵ Collective sanctions provide the United Nations with an alternative to the use of force and have a stronger impact than diplomatic condemnation or isolation.²⁶ The recent surge

-
- a. higher standards of living, full employment, and conditions of economic and social progress and development;
 - b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
 - c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Id.

23. U.N. CHARTER arts. 39-51. Chapter VII refers to actions taken with respect to threats to the peace, breaches of peace, and acts of aggression. *Id.*

24. U.N. CHARTER art. 55, *supra* note 22.

25. SUPPLEMENT TO AN AGENDA FOR PEACE, *supra* note 11, at 8. The number of sanctions regimes imposed by the U.N. Security Council rose from one in 1988 to seven in 1994. *Id.* See James C. Ngobi, *The United Nations Experience with Sanctions*, in *ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING IN A POST-COLD WAR WORLD?* 17, 17-18 (David Cortright & George A. Lopez eds., 1995) [hereinafter *ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING?*] (listing sanctions imposed by United Nations since 1990, including sanctions against Iraq, former Yugoslavia, Serbia, Montenegro, Libya, Somalia, Liberia, Cambodia, Haiti, Angola, and Rwanda).

26. George A. Lopez and David Cortright, *Economic Sanctions in Contemporary Global Relations*, in *ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING?*, *supra* note 25, at 3, 5.

in the use of collective sanctions stems from a number of factors, notably the fall in unilateral sanctions due to the end of the Cold War, an increase in the volume of international trade, and the growing interest of the international community to cooperate in rectifying violations of international legal norms.²⁷

A. *Multinational Organizations*

Multinational organizations seek to respond to the needs of the international community through multilateral and intergovernmental cooperation.²⁸ The number of multinational organizations has risen from thirty at the beginning of the twentieth century to several hundred by 1990.²⁹ The multinational organizations can either be global or regional in geographic focus, bilateral or multilateral in membership, and multi-purpose or single-purpose in scope.³⁰

1. The United Nations

Founded in 1945, the United Nations emerged in response to World War II, as a successor to the League of Nations.³¹ The United Nations' primary objective is the maintenance of international peace and security.³² The U.N. Charter enumerated the

27. *Id.* at 5-6.

28. See generally MIHALY SIMAI, *THE FUTURE OF GLOBAL GOVERNANCE: MANAGING RISK AND CHANGE IN THE INTERNATIONAL SYSTEM* (1994) (discussing multilateral and intergovernmental institutions and their roles).

29. *Id.* at 263.

30. *Id.* at 266. The United Nations, for instance, is a global multi-purpose intergovernmental organization. U.N. CHARTER, pmbl., arts. 1, 2. The Organization of American States is a regional multipurposed intergovernmental organization. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, Apr. 30 1948, T.S. No. 1-F, OEA/Ser.A/2 (English) Rev. 4 [hereinafter OAS CHARTER]. Protocol to Amend the OAS Charter "Protocol of Buenos Aires," February 27, 1967. *Id.* Protocol to Amend OAS Charter "Protocol of Cartagena de Indias," December 5, 1985. *Id.* OAS CHARTER Preamble, art. 2.

31. See ROBERT E. RIGGS & JACK C. PLANO, *THE UNITED NATIONS: INTERNATIONAL ORGANIZATION AND WORLD POLITICS* 1-19 (1988) (discussing history of United Nations). The League of Nations emerged following World War I, in response to a reaction against war. ADAM WATSON, *DIPLOMACY: THE DIALOGUE BETWEEN STATES* 117 (1982). Its ultimate goal was to maintain peace and prevent future aggression. *Id.* The League of Nations ultimately failed for a number of reasons, most notably that the great powers at the time, including the United States, Russia, Japan, and Germany did not take part in the League. *Id.* This left very weak Britain and France to further the principles of the League. *Id.* at 118.

32. See Asbjorn Eide, *Outlawing the Use of Force: The Efforts by the United Nations, in THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 99,

purposes of the United Nations and provided an organizational framework in which to pursue those purposes.³³ Fifty-one states signed and ratified the U.N. Charter in 1945, creating a U.N. system to regulate interstate affairs through the establishment of a benevolent international legal order.³⁴ As of 1996 the United Nations had 185 members³⁵ and found itself increasingly coping with intrastate affairs that constituted threats to international peace and security.³⁶

a. Purposes of the United Nations

According to Article 1 of the U.N. Charter,³⁷ the United Nations has three main purposes, notably the maintenance of international peace and security,³⁸ the equality and self-determination of peoples,³⁹ and the cooperation of the U.N. member states to resolve international economic, social, cultural, or hu-

99 (United Nations' Institute for Training and Research ed., 1987) (discussing United Nations' goal of creating new legal order).

33. See generally U.N. CHARTER (setting out purposes and organizational framework of United Nations).

34. RIGGS & PLANO, *supra* note 31, at 19.

35. NEW ZEALAND MINISTRY OF FOREIGN AFFAIRS AND TRADE & MANATU AORERE, UNITED NATIONS HANDBOOK 11 (1996) [hereinafter UNITED NATIONS HANDBOOK].

36. SUPPLEMENT TO AN AGENDA FOR PEACE, *supra* note 11, ¶ 11. Of the five U.N. peacekeeping operations existing in early 1988, only one related to an intrastate conflict. *Id.* Of the 21 operations established since then, only eight are related to interstate wars and the remaining 13 are related to intrastate wars. *Id.*

37. U.N. CHARTER art. 1. Article 1 states:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Id.

38. *Id.* at ¶ 1.

39. *Id.* at ¶ 2.

manitarian problems and to promote human rights.⁴⁰ The U.N. Charter lists the three purposes, in order of importance, so that the maintenance of international peace and security supersedes the purpose of development.⁴¹ The three purposes, however, are interrelated, and the latter two, equality and self-determination of peoples and economic development, contribute to the maintenance of international peace and security.⁴² Ultimately, economic development has become as important to the United Nations' mission as maintaining international peace and security.⁴³ The United Nations' purposes set out in the Charter determine the power of the United Nations and assign to the U.N. organs their functions and responsibilities.⁴⁴

b. Structure of the United Nations

The U.N. Charter set up an organizational structure consisting of six principal organs to help the United Nations fulfill its purposes.⁴⁵ The General Assembly⁴⁶ consists of all Member

40. *Id.* at ¶ 3.

41. See Mohammed Bedjaoui, *Chapitre I: Buts et Principes — Article I Commentaire Général*, in *LA CHARTE DES NATIONS UNIES* 24, 24 (Jean-Pierre Cot & Alain Pellet eds., 1991) (discussing India's proposal during drafting of U.N. Charter that purposes of United Nations be put in logical rather than political order). India suggested that the maintenance of peace and security be listed last given that it is the United Nations' ultimate purpose and that the other two purposes contribute to the maintenance of peace and security. *Id.*

42. Alain Pellet, *Chapitre IX: Coopération Economique et Sociale — Article 55*, in *LA CHARTE DES NATIONS UNIES*, *supra* note 41, at 843, 847.

43. *Id.* at 847. "The promotion of economic and social progress is one of the United Nations' primary objectives, enshrined in the Charter." *Renewing the United Nations*, *supra* note 1, ¶ 68. Former Secretary-General Boutros Boutros-Ghali wrote:

Development is the most important task facing humanity today. Yet, as the United Nations celebrates its fiftieth anniversary, we are in danger of losing sight of such an essential task. Beset by the growth of conflicts, and the necessity to maintain the peace in the tense post-cold war environment, we risk getting lost in the urgency of peace-keeping, at the expense of the longer term development effort.

BOUTROS BOUTROS-GHALI, *AN AGENDA FOR DEVELOPMENT* at 1, U.N. Sales No. E.95.I.16 (1995) [hereinafter *AN AGENDA FOR DEVELOPMENT*].

Boutros-Ghali commented that "[t]he Security Council, through the provisions of Chapter VII, can adversely affect the course of development within States to which sanctions apply, as well as in neighbouring states." *An Agenda for Development: Report of the Secretary-General* at ¶ 143, U.N. Doc. A/48/935, reprinted in *AN AGENDA FOR DEVELOPMENT*, *supra* note 43.

44. See Mohammed Bedjaoui, *supra* note 41, at 28 (discussing impact of three purposes set out in U.N. Charter).

45. U.N. CHARTER art. 7, ¶ 1.

States and is the representative body of the United Nations.⁴⁷ With the exception of overseeing the budget,⁴⁸ the General Assembly's functions are limited to discussing issues within the scope of the U.N. Charter,⁴⁹ considering general principles of co-operation in the field of international peace and security,⁵⁰ initiating studies, and making recommendations.⁵¹ The Security Council,⁵² consisting of five permanent members⁵³ and ten non-permanent members elected for two year terms by the General Assembly,⁵⁴ is a political organ whose primary function is to oversee the maintenance of international peace and security through either dispute settlement or other concerted actions.⁵⁵ The Economic and Social Council ("ECOSOC")⁵⁶ coordinates development activities.⁵⁷ The Trusteeship Council⁵⁸ assists in the administration and supervision of trust territories.⁵⁹ The International

46. See U.N. CHARTER Chapter IV, arts. 9-22 (setting out composition, functions, powers, voting, and various procedures of General Assembly).

47. U.N. CHARTER art. 9.

48. U.N. CHARTER art. 17.

49. U.N. CHARTER art. 10.

50. U.N. CHARTER art. 11.

51. U.N. CHARTER arts. 13, 14. The General Assembly, however, may not make recommendations regarding a dispute or a situation the Security Council is overseeing, unless the Security Council so requests. U.N. CHARTER art. 12, ¶ 1.

52. See U.N. CHARTER Chapter V, arts. 23-32 (setting out composition, functions, powers, voting, and procedures of Security Council).

53. U.N. CHARTER art. 23, ¶ 1. The five permanent members of the Security Council are China, France, Russia, the United Kingdom, and the United States. *Id.*

54. *Id.*

55. U.N. CHARTER art. 24, ¶ 1.

56. See U.N. CHARTER Chapter X, arts. 61-72 (setting out composition, functions, powers, voting, and procedures of the Economic and Social Council ("ECOSOC")).

57. U.N. CHARTER art. 62. To assist it in carrying out its tasks, ECOSOC can set up commissions in economic and social fields. U.N. CHARTER art. 68. Furthermore, ECOSOC can enter into consultation agreements with non-governmental organizations that work in the field of human rights or economic and social development. U.N. CHARTER art. 71. ECOSOC can enter into similar arrangements with international or national organizations, provided that the United Nations consult the Member State concerned prior to entering into such an arrangement. *Id.* Finally ECOSOC can supply information to the Security Council. U.N. CHARTER art. 65.

58. U.N. CHARTER Chapters XII-XIII, arts. 75-91.

59. U.N. CHARTER art. 87. Trust territories refer to territories placed under the trusteeship system to be supervised and administered by the United Nations Trusteeship Council. U.N. CHARTER art. 75. The territories which could be placed under the trusteeship system were either territories held under mandate, territories which could be detached from enemy states as a result of World War II, and territories voluntarily placed under the system by states responsible for their administration. U.N. CHARTER art. 77. In 1994 the U.N. Secretary General recommended that the trusteeship system

Court of Justice ("ICJ")⁶⁰ is the principal judicial organ of the United Nations,⁶¹ deciding, in accordance with international law, disputes arising between states.⁶² Finally, the Secretariat,⁶³ consisting of the Secretary-General and a staff,⁶⁴ carries out the programs of the United Nations and performs administrative, budgetary, secretarial, linguistic, staff, and housekeeping functions.⁶⁵ The Secretary-General heads the Secretariat and is the chief administrative officer of the United Nations.⁶⁶ The Secretariat includes a number of offices and departments such as the Office of Legal Affairs, the Department of Political Affairs, the Department of Peacekeeping Operations, and the Department of Humanitarian Affairs.⁶⁷ The Department of Humanitarian Affairs ("DHA") was created to coordinate the United Nations' humanitarian activities.⁶⁸

Pursuant to Article 22 of the U.N. Charter, the General Assembly may create any subsidiary organs necessary to help it accomplish its tasks.⁶⁹ As a result, since 1948, the General Assembly has established several hundred subsidiary organs including temporary budgetary committees and political commissions.⁷⁰

be abolished in accordance with Article 108 of the U.N. Charter. UNITED NATIONS HANDBOOK, *supra* note 35, at 149.

60. See U.N. CHARTER Chapter XIV, arts. 92-96 (providing basic framework for role of International Court of Justice ("ICJ")); see U.N. CHARTER annex, *Statute of the International Court of Justice* (setting out organization, competence, and procedure of International Court of Justice).

61. U.N. CHARTER art. 92.

62. U.N. CHARTER annex, *Statute of the International Court of Justice*, art. 38(1).

63. See U.N. CHARTER Chapter XV, arts. 97-101 (setting out composition, functions, and powers of Secretariat).

64. U.N. CHARTER art. 97. Article 97 states: "[t]he Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization." *Id.*

65. RIGGS AND PLANO, *supra* note 31 at 47.

66. U.N. CHARTER art. 97, *supra* note 64.

67. UNITED NATIONS HANDBOOK, *supra* note 35, at 159-160.

68. See *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations: Report of the Secretary-General*, U.N. GAOR, 48th Sess., Agenda Item 44, at 4, ¶ 8, U.N. Doc. A/48/536 (1993) [hereinafter *Humanitarian Assistance: Report of the Secretary-General*] (stating that "[t]he Department of Humanitarian Affairs was established by the Secretary-General as the focal point for humanitarian affairs within the United Nations system to facilitate a timely and coordinated system-wide response to disasters. The Department also serves as an advocate for the humanitarian mandate of the United Nations.").

69. U.N. CHARTER art. 22.

70. See Jacqueline Dutheil de la Rochère, *Article 22*, in LA CHARTE DES NATIONS

The most important subsidiary organs to emerge pursuant to Article 22 are the Specialized Agencies created in the area of economic and social development.⁷¹

The Specialized Agencies have more complex structures than other U.N. organs, far-reaching mandates, and receive financing primarily from voluntary contributions by member states and not from the regular U.N. budget.⁷² Moreover, the Specialized Agencies have a special relationship with ECOSOC.⁷³ ECOSOC defines the terms under which the Specialized Agencies are brought into the U.N. system,⁷⁴ coordinates the activities of the Agencies,⁷⁵ and may obtain reports from the Agencies.⁷⁶

The Bretton Woods Institutions are the final component of the U.N. system.⁷⁷ These institutions resulted from the 1944 Bretton Woods Monetary and Financial Conference.⁷⁸ The International Bank for Reconstruction and Development ("IBRD") emerged as the principal unit of the United Nations' lending system.⁷⁹ Comprised of the International Monetary Fund ("IMF") and the World Bank Group,⁸⁰ the Bretton Woods Insti-

UNIES, *supra* note 41, at 421, 423-424 (outlining general types of subsidiary organs General Assembly has created since 1948).

71. *Id.* at 423. See U.N. CHARTER art. 57 (describing scope of specialized agencies and placement in U.N. system).

72. Duheil de la Rochère, *supra* note 70, at 423. The main Specialized Agencies functioning in Haiti and providing humanitarian assistance in Haiti throughout the embargo were the United Nations Development Program ("UNDP"), the World Food Program ("WFP"), United Nations Children Fund ("UNICEF"), the United Nations Population Fund ("UNFPA"), the Food and Agricultural Organization ("FAO") and the World Health Organization ("WHO") through the Pan-American Health Organization ("PAHO"). See USAID, HAITI: MONITORING REPORT OCTOBER 1994, at 10 (setting out amounts of contributions of each agency for year); see also *An Agenda for Development: Report of the Secretary General*, *supra* note 43, at ¶ 228 (stating that with its global network of field offices, UNDP is in unique position to help United Nations respond "flexibly and rapidly to changing national priorities").

73. U.N. CHARTER arts. 62-64, 66, ¶ 1.

74. U.N. CHARTER art. 63, ¶ 1.

75. U.N. CHARTER art. 63, ¶ 2.

76. U.N. CHARTER art. 64, ¶ 1.

77. ERSKINE CHILDERS & BRIAN URQUHART, *RENEWING THE UNITED NATIONS SYSTEM* 25 (1994).

78. See RIGGS & PLANO, *supra* note 31, at 294 (discussing creation of Bretton Woods Institutions).

79. *Id.* at 336.

80. CHILDERS & URQUHART, *supra* note 77 at 25. The World Bank Group includes the International Bank for Reconstruction and Development ("IBRD"), the main commercial-rate lending bank, the soft-loan International Development Association ("IDA"), and the International Finance Corporation ("IFC"). *Id.*

tutions have budgets and voting procedures separate from those of the United Nations.⁸¹

2. The Organization of American States

Chapter VIII of the U.N. Charter provides for the integration of regional arrangements into the U.N. system, to assist in maintaining international peace and security.⁸² The Charter does not define the term regional arrangement and only concedes, in Article 52, that a regional arrangement must assist in maintaining international peace and security and that the regional arrangement's activities must be consistent with the purposes of the United Nations.⁸³ Regional arrangements can only undertake pacific settlement of disputes,⁸⁴ and must get permission from the Security Council to undertake enforcement action, except under very limited circumstances.⁸⁵ Regional orga-

81. *Id.*

82. U.N. CHARTER Chapter VIII, arts. 52-54.

83. See Edem Kodjo, *Chapitre VIII: Accords Régionaux — Article 52*, in LA CHARTE DES NATIONS UNIES, *supra* note 41, at 798, 802-805 (discussing different scholars' views on what constitutes regional arrangement under U.N. Charter).

84. U.N. CHARTER art. 52, ¶ 2 and 52, ¶ 3. Article 52 states:

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

U.N. CHARTER art. 52.

85. U.N. CHARTER art. 53, ¶ 1. Article 53 establishes that:

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

nizations' abilities to pursue pacific settlements to disputes are subordinated to the Security Council's authority under Article 52(4) allowing the Security Council to investigate any dispute.⁸⁶ Article 33(1) of the U.N. Charter lists resort to regional agencies as one of the options U.N. members should consider in trying to resolve disputes through pacific means.⁸⁷

The OAS is the world's oldest regional organization,⁸⁸ dating back to the First International Conference of American States⁸⁹ held from October 1889 to April 1890.⁹⁰ The OAS Charter entered into force in 1951.⁹¹ The OAS' membership consists of thirty-two American and Caribbean states.⁹²

The OAS was founded primarily as a collective defense system for the maintenance of peace and security in the Americas.⁹³ Until recently, the OAS subordinated its other objectives to the collective defense objective.⁹⁴ Due to the region's past history, intervention was a serious concern of the founders of the OAS.⁹⁵ Scholars hold that the OAS has been most effective in its crisis management role, and that the United Nations has given the OAS considerable leeway to fulfill its pacifying role.⁹⁶ The

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

U.N. CHARTER art. 53.

86. U.N. CHARTER art. 52, ¶ 4, *supra* note 84.

87. U.N. CHARTER art. 33, ¶ 1. "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." *Id.*

88. OAS CHARTER, *supra* note 30 (editorial statement at endleaf).

89. *Id.*

90. *Id.*

91. *Id.*

92. *See id.* (listing members of OAS).

93. *Id.*

94. *See* Aida Luisa Levin, *The Organization of American States and the United Nations: Relations in the Peace and Security Field*, in REGIONALISM AND THE UNITED NATIONS, 147, 147-224 (Berhanykun Andemicael, ed., 1979) (analyzing role of OAS in maintaining international peace and security in Americas). Between 1948, date of the founding of the OAS and 1960 for instance, the United Nations did not involve itself in inter-American conflicts, with the exception of Guatemala in 1954. *Id.* at 151.

95. *See* Lori F. Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence Over Domestic Affairs*, 83 AM. J. INT'L L. 1, 7 (1989) (discussing non-intervention norm in OAS Charter and stating that due to their past history, Latin American states contributed substantially to legal development of non-intervention norm).

96. Levin, *supra* note 94, at 151.

OAS Charter explicitly states that the OAS functions within the framework of the United Nations under Article 136.⁹⁷ The OAS is a system for pacific dispute settlement and collective self-defense, and not an expansive system of collective security like the United Nations.⁹⁸ This precludes the OAS, for instance, from using sanctions as a form of economic coercion pursuant to Articles 18 and 19 of the OAS Charter.⁹⁹

B. Sanctions

Nation-states are opting more frequently for sanctions to resolve national and international crises.¹⁰⁰ The international community cooperates to impose sanctions in an attempt to deter and rectify violations of international legal norms.¹⁰¹ Despite commentators questioning the political efficacy of economic sanctions,¹⁰² the international community prefers them to the use of force and the direct intervention in a country's internal affairs.¹⁰³

97. OAS CHARTER, *supra* note 30, art. 136. "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations." *Id.*

98. See Domingo E. Acevado, *The U.S. Measures Resulting from the Malvinas Conflict*, 28 AM. J. INT'L L. 323, 331 n.23 (stating that despite use of expression "collective security" in OAS Charter, OAS is only self-defense organization).

99. OAS CHARTER, *supra* note 30, arts. 18, 19. Article 18 of the OAS Charter states: No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

Id. art. 18. "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind." *Id.* art. 19.

100. See SUPPLEMENT TO AN AGENDA FOR PEACE, *supra* note 10, at 8 (reporting that Security Council had imposed one sanction regime in 1988 compared to seven in 1994).

101. See *id.* at ¶ 68 (stating that purpose of sanctions is to modify and not to punish behavior of party that is threatening international peace and security).

102. See, e.g., *id.* at ¶ 70 (discussing various drawbacks of economic sanctions).

103. See G.C. HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED*, VOLUME 1: HISTORY AND CURRENT POLICY 11 (2nd ed. 1990) [hereinafter *ECONOMIC SANCTIONS RECONSIDERED*] (contending that sanctions are surrogate for other measures, including more extreme measures such as covert actions or other military interventions). Economic sanctions were used occasionally prior to World War I. *Id.* at 28-31. The American colonies used sanctions to retaliate against the British. *Id.* at 28. The British used sanctions to contain French expansion during the Napoleonic wars. *Id.* at 29. The Northern States of the United States used sanctions against the Confederate States dur-

1. Types of Sanctions

Sanctions are an alternative form of intervention¹⁰⁴ to the use of force and governments have been using them since nation states came into existence.¹⁰⁵ Without resorting to force, a nation applying sanctions appears to be taking decisive action in trying to resolve a dilemma by applying sanctions, whether diplomatic, financial, or economic in nature.¹⁰⁶ Actors fall within two broad categories, the sender state(s) which imposes the sanctions and the target state(s) on which the sanctions will be imposed.¹⁰⁷

In recent years scholars have propounded a number of spe-

ing the Civil War. *Id.* at 30. The Russians used sanctions against the Japanese during the Russo-Japanese war at the turn of the century. *Id.* at 31. Whereas prior to World War II, nation-states used sanctions mostly during periods of warfare, or generally to prevent or further hegemonic, expansionist or colonial objectives, since World War II there has been a rise in the use of economic sanctions as moral fronts for other reasons such as improving human rights. *See id.* at 5 (stating that through World War II "the objectives sought with the use of sanctions retained a distinctly martial flavor."). There are numerous examples in the late 1970s and early 1980s of the use of sanctions, particularly by the United States, to improve human rights in Uruguay, in Guatemala, in the former Soviet Union, and in Haiti. G.C. HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED: SUPPLEMENTAL CASE HISTORIES* (2nd ed. 1990) [hereinafter *ECONOMIC SANCTIONS RECONSIDERED, SUPPLEMENT*] at 417-21, 438-44, 487-91, 598-605. Other examples of the use of sanctions to improve human rights include the European Community imposing sanctions on Turkey to restore democracy, and the United States and the United Kingdom using sanctions against Somalia to improve human rights and to end the civil war. *Id.* at 532-36, 619-24.

104. *See*, 33RD STRATEGY FOR PEACE U.S. FOREIGN POLICY CONFERENCE, *THE UNITED NATIONS AND MULTILATERAL SANCTIONS: NEW OPTIONS FOR U.S. POLICY?* 7 (1992) [hereinafter *THE UNITED NATIONS AND MULTILATERAL SANCTIONS*] (claiming that sanctions are attractive enforcement option available to U.N. member states because member states can stop sanctions short of warfare and invoke sanctions at low cost to most of member states who cast votes). Sanctions are often referred to as foreign policy on the cheap. *Id.* George Schultz referred to them as light-switch diplomacy. *See* Donald L. Losman, *A Look at . . . The Case Against Sanctions: Good Intentions Gone Bad; Punitive Trade Embargoes are Appealing, but they don't Achieve our Goals*, WASH. POST, Oct. 6, 1996, at C3 (referring to former Secretary of State George Schultz's comments that commercial relations cannot be turned on and off because of sanctions episode).

105. *ECONOMIC SANCTIONS RECONSIDERED*, *supra* note 103, at 28. Around 432 B.C. for instance, Athens limited the entry of Megara's products into Athenian markets in retaliation for Megara's kidnapping of three women and for attempting to confiscate Athenian territory. *Id.* The decree was said to have eventually contributed to the Peloponnesian war between Athens and Sparta. *Id.*

106. *See id.* at 11 (arguing that sanctions are generally imposed on target for three reasons, notably, to deter target state from pursuing any objectionable policies, to demonstrate resolve of sender state to rectify situation, and as substitute for other measures).

107. *See id.* at 36 (defining sender as "the country (or international organization)

cific definitions of economic sanctions.¹⁰⁸ Due to the lack of consensus as to what constitutes sanctions, there is no clear-cut definition of the purpose and objectives of sanctions.¹⁰⁹ Sanctions are not objectives in themselves, but rather policy instruments to achieve certain objectives.¹¹⁰

Regardless of sanctions' objectives, the only sanction tools short of warfare are economic ones subject to general economic exchange.¹¹¹ Both political and economic variables therefore can influence the effectiveness of sanctions.¹¹² Various methods

that is the principal author of the sanctions episode," and target as "the country that is the immediate object of the episode").

108. Compare Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1162, 1166 (defining economic sanctions as "coercive economic measures taken against one or more countries to attempt to force a change in policies, or at least to demonstrate the sanctioning country's opinion of another's policies") and ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 2 (defining economic sanctions as "deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations") with MARGARET DOXEY, ECONOMIC SANCTIONS & INTERNATIONAL ENFORCEMENT 1 (1971) (defining sanctions as "conformity-defending instruments relating to behavior which is expected by custom or required by law") and MICHAEL P. MALLOY, ECONOMIC SANCTIONS AND U.S. TRADE 13 (1990) (defining economic sanctions as:

[A]ny country-specific economic or financial prohibition imposed upon a target country or its nationals with the intended effect of creating dysfunction in commercial and financial transactions with respect to the specified target in the service of specified foreign policy purposes. The term *sanction* in the present context therefore includes a range of trade and financial measures that may be imposed in varying combinations, administered by a number of agencies.).

109. Jonathan Galtung, *On the Effects of International Economic Sanctions*, in DILEMMAS OF ECONOMIC COERCION: SANCTIONS IN WORLD POLITICS, *supra* note 7, at 17, 20 (Miroslav Nincic and Peter Wallensteen eds., 1983). Sanctions can have either or both of the following policy objectives: a) to punish a state or states by depriving them of certain goods, privileges, and opportunities, category A; or b) to make the targeted state(s) comply with certain norms, category B. *Id.* Furthermore, sanctions can be classified as (1) inducements or punishments, (2) universal, multilateral, or unilateral, (3) collective or targeted at an individual state, (4) internal, focused on changing the domestic policy of the target, or external, emphasizing the targeted state's relations with other states, (5) general or selective, involving all possible measures or only some, and within that, total or partial sanctions, involving all or some of a measure. *Id.*

110. See THE UNITED NATIONS AND MULTILATERAL SANCTIONS, *supra* note 104, at 12 (presenting three categories of purposes of sanctions, notably to limit worsening of conflict situation, as prelude or alternate to military intervention, and to change nation's regime). See also MALLOY, *supra* note 108, at 20 (distinguishing between directive, defensive, and communicative policy objectives).

111. ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 39.

112. See *id.* at 40 (giving partial listing of political and economic variables). Political variables include companion policies such as covert operations, quasi military action, regular military action used by sender country, extent of international coopera-

exist to assess the effectiveness of sanctions.¹¹³ Different approaches also exist to estimate the cost of sanctions.¹¹⁴

2. U.N. Power to Impose Sanctions

The United Nations coordinates and monitors multinational collective sanctions.¹¹⁵ To this end, it has created an infrastructure to implement sanctions.¹¹⁶ Economic sanctions and other non-military sanctions are a form of intervention within international law.¹¹⁷

Pursuant to Chapter VII of the U.N. Charter, sanctions constitute legitimate interventions¹¹⁸ under norms of international law when used by the United Nations to enforce international

tion in imposing sanctions, presence of international assistance to the target country, political stability and economic health of the target country, warmth of relations between sender and target. *Id.* Economic variables include cost imposed on target, commercial relations between sender and target state, relative economic size of the countries as measured by ratio of GNPs, types of sanctions used, cost to sender country. *Id.*

113. See MALLOY, *supra* note 108, at 626 (arguing that overarching policy used to implement sanctions, and not sanctions themselves should be used to judge sanctions' effectiveness); see also ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 42 (stating that success of sanctions episode is based on (1) extent to which policy outcome sought by sender country was achieved and (2) contribution made by sanctions to a positive outcome).

114. See ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 120 (creating separate mechanism to evaluate costs of sanctions relative to sender's and target's gross national product). There are also four broad categories of costs to the sender country that are applicable to any sanctions episode notably a net gain to the sender, usually in the case where aid is withheld, little effect on sender, modest loss to sender, and a major loss to sender. ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 48.

115. See U.N. CHARTER art. 41, *supra* note 21 (stating that U.N. Security Council may call on U.N. Member States to apply sanctions).

116. James C. Ngobi, *supra* note 25, at 20-22.

117. Ernst B. Haas, *Beware the Slippery Slope: Notes toward the Definition of Justifiable Intervention*, in EMERGING NORMS OF JUSTIFIED INTERVENTION 63, 66-67 (Laura W. Reed & Carl Kaysen eds., 1993) [hereinafter JUSTIFIED INTERVENTION].

118. Lori F. Damrosch, *Changing Conceptions of Intervention in International Law*, in JUSTIFIED INTERVENTION, *supra* note 117, at 91, 91 (giving classic definition of intervention as "improper interference by an outside power with the territorial integrity or independence of a state"). Intervention has also been defined as a less coercive form of conflict resolution, implying the use of a collective or supranational effort such as peacekeeping or peacemaking. See *id.* (stating that "intervening party comes between disputing parties much as a mediator would but equipped with sufficient power to impose a just solution," also known as "benevolent intervention"); see also Haas, *supra* note 117, at 77 (describing justifiable intervention and arguing that some intervention is "justifiable when the evil we seek to avert is overwhelming: genocide, famine, economic disaster. In other instances, the evil is more subtle but the available means of intervention are efficacious and on balance, defensible: protecting selected human rights, improving economic performance, or limiting terrorism by others").

peace and security.¹¹⁹ Collective enforcement action can be taken under the U.N. Charter when there is a breach of the peace, an act of aggression, or a threat to the peace.¹²⁰ The Security Council's authority to enforce derives from Article 39 of the U.N. Charter.¹²¹ Even though Article 2(7)¹²² limits the power of the United Nations to intervene as an organization in the internal affairs of a state,¹²³ Article 2(7) is expressly

119. U.N. CHARTER Chapter VII, *supra* note 23; U.N. CHARTER art. 41, *supra* note 21. The legal basis for collective intervention rests in Article 1(1) of the U.N. Charter. U.N. CHARTER art. 1, ¶ 1. Article 1(1) states that the purposes of the United Nations are:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlements of international disputes or situations which might lead to a breach of the peace.

Id.

120. *Id.* In its advisory opinion in the *Certain Expenses* case, the ICJ considered enforcement action to be that action provided for under Chapter VII of the U.N. Charter. *Certain Expenses of the United Nations*, 1962 I.C.J. 151 (20 July) [hereinafter *Certain Expenses*]. The ICJ held that the peacekeeping operation known as the U.N. Emergency Force in Gaza ("UNEF"), did not constitute enforcement action because the parties involved had given their consent. *See id.* at 170 (holding that "[t]he verb 'secure' as applied to such matters as halting the movement of military forces and arms into the area and the conclusion of a cease-fire, might suggest measures of enforcement, were it not that the Force was to be set up with the consent of the nations concerned").

121. U.N. CHARTER art. 39. Article 39 of the U.N. Charter declares "[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." *Id.* The *Certain Expenses* case clearly established that the authority to enforce is vested in the Security Council and not in the General Assembly. *Certain Expenses*, *supra* note 120, at 163.

122. *See* U.N. CHARTER art. 2, ¶ 7. Article 2(7) states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Id.

123. *See* Damrosch, *Changing Conceptions of Intervention in International Law*, *supra* note 118, at 96 (arguing that:

A 'group of States' acting within the framework of the UN would not be able to go beyond the strictures of Article 2(7), and a group purporting to act under the auspices of a regional arrangement would likewise have no greater powers than the Security Council acting in its enforcement capacity, and would presumably need to obtain the Council's authorization, which itself would be confined to what is consistent with Article 2(7)).

subordinated to the Security Council's enforcement power in situations which the Council considers as threats to international peace and security under Chapter VII of the U.N. Charter.¹²⁴ Moreover, the definition of a threat to international peace and security is fluid and has evolved rapidly, thereby allowing the United Nations to intervene in affairs traditionally thought to be domestic.¹²⁵ Individual Member States' ability to intervene under the United Nations is regulated by Articles 1(2),¹²⁶ 2(4),¹²⁷ and, in instances of self-defense, by Article 51.¹²⁸ The

124. U.N. CHARTER art. 2(7), *supra* note 122. Damrosch, *Changing Conceptions of Intervention in International Law*, *supra* note 118, at 100.

125. See Damrosch, *Changing Conceptions of Intervention in International Law*, *supra* note 118, at 103-6 (setting out cases of international intervention in Iraq for its treatment of Kurds, in Yugoslavia to try and stem civil conflict, and in Somalia to stop civil war); see also Robert A. Pastor, *Forward to the Beginning: Widening the Scope for Global Collective Action*, in JUSTIFIED INTERVENTION, *supra* note 117, at 138, 140 (arguing that new concepts such as environment, human rights, social justice, and economic development need to be included into traditional definition of security because those types of injuries can eventually become threats to international peace and security). Boundaries blur between what constitutes a domestic affair and what constitutes an international threat. See AN AGENDA FOR PEACE, *supra* note 10, ¶ 17 (conceding that "the time of absolute and exclusive sovereignty has passed"). Furthermore, a threat eventually ends up being defined by political interests or the media. See Richard Rosencrance, *Commentary to Robert A. Pastor*, in JUSTIFIED INTERVENTION, *supra* note 117, at 149, 149 (arguing that "CNN has certainly enlarged the agenda for intervention, no matter what responses are made to increasingly visible global crises. Some intervention will be forced on us by the sheer great degree of attention to what is actually happening . . ."). Academics have argued that consent by the target's government would override the Article 2(7) prohibition against intervention. See Kimberley Stanton, *Pitfalls of Intervention: Sovereignty as a Foundation for Human Rights*, HARV. INT'L REV., Fall 1993, at 14, 14 (stating that foreign presence with consent of host state should be distinguished from intervention). But see Abraham Chayes, *Commentary to Ernst B. Haas*, in JUSTIFIED INTERVENTION, *supra* note 117, at 88, 88 (arguing that consent is highly elastic and therefore dubious concept and does not automatically ensure legitimacy, since intervened-upon party may have to concede in many cases). Finally, a question arises regarding disintegrating states such as Somalia, as to who gives the consent to an international or regional organization to intervene, and from where that consenting party derives its legitimacy. See *id.* (questioning whether or not Somalia could consent in any effective sense).

126. U.N. CHARTER art. 1, ¶ 2, *supra* note 37.

127. U.N. CHARTER art. 2, ¶ 4. Article 2(4) states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." *Id.*

128. U.N. CHARTER art. 51. Article 51 proclaims that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Se-

intent and purpose of the intervening state, authorization by the United Nations Security Council, or eventually commitments laid out in a specific treaty¹²⁹ determine the legality of unilateral intervention by a given state.¹³⁰

Two final options remain with the Security Council to enforce international peace and security.¹³¹ Under Article 36(3),¹³² the Security Council can encourage parties to refer legal disputes to the International Court of Justice.¹³³ Pursuant to Article 94 of the Charter, Member States parties to the dispute should comply with the ICJ's decision.¹³⁴ The Security Council's second option is to use regional or collective arrangements for enforcement action under the Council's authority, pursuant to Article 53 of the Charter.¹³⁵

curity Council and shall not in any way affect the authority of and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Id.

129. Acevado, *supra* note 98, at 328.

130. *See id.* at 323-24 (analyzing U.S. sanctions against Argentina resulting from Malvinas conflict).

131. *See* U.N. CHARTER art. 36, ¶ 3, art. 53 (outlining options available to Security Council to settle disputes such as, referring disputes to ICJ and using regional arrangements).

132. U.N. CHARTER art. 36, ¶ 3. Article 36(3) states that "[i]n making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court." *Id.*

133. *Id.* *See* U.N. CHARTER art. 37(2) (declaring that "[i]f the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.").

134. U.N. CHARTER art. 94. Article 94 states that:

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Id.

135. U.N. CHARTER art. 53. Article 53 states:

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state,

3. Multinational Organizations' Mechanisms to Impose Sanctions

The imposition of sanctions involves implementation and maintenance policies.¹³⁶ Depending on the type of sanction, unilateral or multilateral, the implementation of the sanctions and the policies followed will vary.¹³⁷ Multinational organizations such as the United Nations have set up extensive mechanisms to initiate, administer, and oversee a sanctions episode.¹³⁸ Ultimately, however, the Member States of the multinational organization are responsible for implementing the measures through national enforcement and compliance.¹³⁹

a. The OAS

Since the early 1990s, the United Nations has increased its cooperation with regional organizations such as the OAS.¹⁴⁰ Furthermore, in response to a wave of democratization in Latin

until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Id.

136. LOPEZ & CORTRIGHT, *supra* note 26, at 3.

137. See Christopher C. Joyner, *Sanctions and International Law*, in ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING, *supra* note 25, at 73, 79 (stating that there are inherent differences among nations' national legislation, individual legislative processes, and bureaucratic capabilities to implement sanctions).

138. See *id.* at 76 (outlining basic U.N. sanctions mechanism).

139. *Id.* at 77.

140. AN AGENDA FOR PEACE, *supra* note 10, ¶ 63. The author writes:

In the past, regional arrangements often were created because of the absence of a universal system for collective security; thus their activities could on occasion work at cross-purposes with the sense of solidarity required for the effectiveness of the world Organization. But in this new era of opportunity, regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the Purposes and Principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII.

. . . Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs.

Id. at ¶ 63, 64.

America in the 1980s,¹⁴¹ the OAS adopted a resolution to combat future threats to democracy in the region.¹⁴² The OAS General Assembly adopted Resolution 1080 (the "Santiago Declaration") in June 1991.¹⁴³ The Santiago Declaration established a new mechanism for convening an Ad Hoc Meeting of the Ministers of Foreign Affairs, or a special session of the OAS General Assembly, in response to any *coup d'état* which overthrew a democratically elected leader in one of the OAS Member States.¹⁴⁴ The Ministers could then study the situation and propose methods to rectify the problem.¹⁴⁵ The proposal could include sanctions or some other form of intervention in the situation.¹⁴⁶

141. See Richard J. Bloomfield, *Making the Western Hemisphere Safe for Democracy? The OAS Defense-of-Democracy Regime*, 17 WASH. Q. 2 157, 161 (1994) (stating that emergence of democracies in Latin America in 1980s resulted from dictatorships' inability to deal with problems facing Latin American societies).

142. *Id.* The OAS Charter also includes, as its second objective, the promotion and consolidation of democracy, the first objective being the strengthening of peace and security in the region. OAS CHARTER, *supra* note 30, art. 2.

The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes:

- a) To strengthen the peace and security of the continent;
- b) To promote and consolidate representative democracy, with due respect for the principle of non-intervention. . . .

Id. art. 2, ¶ a, ¶ b.

143. OAS G.A. Res. 1080 (1991), OAS Doc. AG/RES 1080 (XXI-0/91) [hereinafter *The Santiago Declaration*].

144. *Id.*

145. *Id.*

146. See Bloomfield, *supra* note 141, at 158 (stating that in *coups* following adoption of Santiago Declaration, OAS foreign ministers resorted to economic and political sanctions to back up their demands that democracy be restored). Shortly after resolution's adoption, the OAS' commitment to democracy under the Santiago Declaration was put to the test with *coups* in Peru, Guatemala and Haiti. *Id.* Since the Santiago Declaration, the OAS has not only condemned the political *coups* in Haiti, Peru, and Guatemala in 1991 and 1992 but also, in the case of Haiti, backed its condemnations with economic and political sanctions. *Id.* Giving the reasons, for instance, why the OAS needed to intervene in the Haitian situation how and when it did, Assistant Secretary of State, Bernard Aronson testified to the Subcommittee on Western Hemisphere Affairs on October 31, 1991 that:

The international community has a deep interest in defending the December elections because its presence in Haiti helped to guarantee that the process could, and did, succeed. We have a responsibility also because the unanimous decision in Santiago to defend democracy is being tested and watched by others throughout this Hemisphere who might harbor similar designs. Finally we have an obligation to act because after 200 years of waiting, the Haitian people need and deserve the solidarity of the democratic community to defend their hard-won, fragile, and new democratic liberties.

While the Santiago Declaration initiated the OAS' current program for hemisphere-wide democracy,¹⁴⁷ the Declaration only conditions, rather than repeal the OAS' principle of non-intervention stated in Article 18 of the OAS Charter.¹⁴⁸ Enforcement activities of the OAS also remain under Security Council control pursuant to Article 53(1) of the U.N. Charter, because regional arrangements cannot pursue enforcement action without the approval of the United Nations.¹⁴⁹

b. The United Nations

The General Assembly can only issue non-binding recommendations and its enforcement power is therefore limited.¹⁵⁰ Pursuant to Article 14 of the U.N. Charter, the General Assembly may recommend that Member States voluntarily impose sanc-

Testimony of Assistant Secretary of State for Inter-American Affairs, Bernard Aronson Before the Subcomm. on Western Hemisphere Affairs of the House Foreign Aff. Comm. (1991).

147. Bloomfield, *supra* note 141, at 158. Prior to the Santiago Declaration, the OAS tended to ignore its mandate to promote democracy in favor of its requirement of nonintervention. *Id.* Resolution 1080 reflected primarily the interests of the United States, Venezuela and Chile and represented an attempt to bring democracy to the fore of the OAS' agenda for the 1990s. *Id.* at 161-62. *See id.* at 169 n. 6 (pointing out that Resolution 1080 was compromise). The Caribbean nations, Argentina, Canada and a few other states quickly accepted the provisions set forth by the Resolution. *Id.* at 162. Brazil, Mexico, Colombia and a few others on the other hand had some reservations about the Resolution, particularly that the Resolution seemed so automatic in its implementation. *Id.* When the OAS was considering referring the Haiti issue to the Security Council, Brazil did not want to on the grounds that Haiti did not constitute a threat to international peace and security and therefore no action should be taken under Chapter VII of the U.N. Charter. *Id.* at 164.

148. OAS CHARTER art. 18, *supra* note 99. Bloomfield, *supra* note 141, at 162. Commentators have argued that the principle of nonintervention enshrined in the OAS Charter is at the root of the *structural* obstacles to a strong OAS defense-of-democracy regime. *Id.*

149. U.N. CHARTER, art. 53, ¶ 1, *supra* note 135. *See* Edem Kodjo, *Article 53, in LA CHARTE DES NATIONS UNIES*, *supra* note 41, at 817-831 (discussing interaction between U.N. Security Council and regional arrangements pursuant to U.N. Charter).

150. U.N. CHARTER arts. 10-14. *See* U.N. CHARTER art. 25 (requiring Member States only to carry out Security Council decisions and not General Assembly resolutions). If adopted unanimously, the General Assembly resolutions are nothing more than evidence of the law or of political will. Oscar Schachter, *United Nations Law*, 88 AM. J. INT'L L. 1, 3 (1994). The General Assembly functions independently of the Security Council but cannot proceed on any issue which is being considered by the Security Council. U.N. CHARTER art. 12, ¶ 1. "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests." *Id.*

tions.¹⁵¹ In contrast, the Security Council plays a central role in the creation of mandatory sanctions imposed by the United Nations.¹⁵²

Article 41 of Chapter VII of the U.N. Charter constitutes the legal basis for the imposition of compulsory sanctions.¹⁵³ For Article 41 to take effect, the Security Council must first determine under Article 39 that the situation threatens international peace and security.¹⁵⁴ The determination of the threat is left to the discretion of the Security Council.¹⁵⁵ The Security Council may also apply Article 41 to a state that has not violated international law, if the Council finds it necessary to do so to enforce one of its decisions for the sake of maintaining international peace and security.¹⁵⁶

Article 50 of the U.N. Charter provides for a possible exemption from participating in a given enforcement action for

151. U.N. CHARTER art. 14. Examples of voluntary sanctions recommended by the U.N. General Assembly include an arms embargo against Bulgaria and Greece in 1949, against China in 1951, and a comprehensive embargo against South Africa. ROBERT B. LILlich, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 469 (2nd ed. 1991). The South Africa embargo recommended by the General Assembly went largely ignored for its first fifteen years by South Africa's main trading partners, including the United States, the United Kingdom, France, West Germany, and Switzerland. *Id.*

152. Schachter, *supra* note 150, at 12.

153. U.N. CHARTER art. 41, *supra* note 21. Schachter, *supra* note 150, at 12.

154. U.N. CHARTER art. 39, *supra* note 121.

155. The United Nations, 13 *Whiteman Digest* § 4, at 415-416. The United States' report on the San Francisco Conference, stated with respect to Article 39 that:

If any single provision of the Charter has more substance than the others, it is surely this one sentence, in which are concentrated the most important powers of the Security Council. It leaves a wide latitude to the discretion of the Security Council, which decides whether a threat to the peace. . . exists. . . .

Id. See Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S.), 1992 I.C.J. 114 (April 14) (holding that once Security Council takes Chapter VII action, its decision is essentially unreviewable). See also Certain Expenses, *supra* note 120, at 168 (stating in dictum that

[t]he primary place ascribed [by the U.N. Charter] to international peace and security is natural, since the fulfilment of the other purposes will be dependent upon the attainment of that basic condition. These purposes are broad indeed, but neither they nor the powers conferred to effectuate them are unlimited. Save as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action. But when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization.).

156. Schachter, *supra* note 150, at 12.

sender states.¹⁵⁷ Article 50, however, is not an escape clause for Member States.¹⁵⁸ Article 50 applies to any state, except the targeted state, suffering economic difficulties as a result of the preventive or enforcement measures.¹⁵⁹ But Article 50 does not guarantee that those states seeking an exemption will receive assistance¹⁶⁰ and only mentions that the state may consult with the Security Council to find a solution to its problems.¹⁶¹

Although the responsibility for implementing the sanctions established by the Security Council lies with the Member States,¹⁶² the United Nations can also monitor which measures sender countries are taking to meet their obligations.¹⁶³ The Security Council resolution establishing the sanctions provides a deadline by which states must report on the measures they have taken.¹⁶⁴ In addition, the Security Council's resolution calls for the creation of a sanctions committee to monitor the implementation of the sanctions.¹⁶⁵ Finally, U.N. Member States' obligation to pass domestic legislation to implement a Security Council sanctions resolution is set out under Article 25 of the U.N. Char-

157. U.N. CHARTER art. 50. Article 50 states:

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Id.

158. VERA GOWLLAND-DEBBAS, *COLLECTIVE RESPONSES TO ILLEGAL ACTS IN INTERNATIONAL LAW: UNITED NATIONS ACTION IN THE QUESTION OF SOUTHERN RHODESIA* 500 (1990). While the unequal burden of applying sanctions is a political and economic one, the Charter only explicitly provides legal remedies which "lie either in a dispensation for certain States by the Security Council on the basis, presumably, of Article 48(1), or in the provision of particular financial or technical assistance under Article 50 and Article 49." *Id.*

159. Pierre Michel Eisemann, *Article 50*, in *LA CHARTE DES NATIONS UNIES*, *supra* note 41, at 762, 762.

160. *Id.*

161. U.N. CHARTER art. 50, *supra* note 157.

162. Joyner, *supra* note 137, at 77.

163. Ngobi, *supra* note 25, at 21-22.

164. *See id.* at 22 (mentioning reports Member States submit to Security Council regarding implementation measures); *see, e.g., Note du Secrétaire Général au Conseil de Sécurité*, U.N. SCOR, U.N. Doc. S/26173, S/26173/Add.1, S/26173/Add.2 (1993), *reprinted in* *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 313 (discussing and listing receipt by Secretary General of Member States' reports pursuant to paragraph 13 of Resolution 841 concerning sanctions in Haiti).

165. Ngobi, *supra* note 25, at 22.

ter.¹⁶⁶ Under Article 48(2) of the Charter, Member States must also ensure that the Specialized Agencies carry out the the Sanctions Committee's decisions as well.¹⁶⁷

C. *U.N. Sanctions in Haiti*

The United Nations imposed sanctions on Haiti as a result of the October 1991 overthrow of Haitian President Jean-Bertrand Aristide.¹⁶⁸ The U.N. sanctions followed several attempts by the international community to reinstate President Aristide.¹⁶⁹ The U.N. sanctions exacerbated a number of social, economic, and political problems endemic to Haiti.¹⁷⁰

166. U.N. CHARTER art. 25. "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." *Id.* Each Member State will have its own means for implementing sanctions. Joyner, *supra* note 137, at 77. Four acts provide the legislative basis for the U.S. government to implement sanctions called for by the United Nations, notably the International Emergency Economic Powers Act ("IEEPA"), the National Emergency Act ("NEA"), the U.N. Participation Act, and the Trading with the Enemy Act. *Id.* The IEEPA gives the President the broad authority over financial transactions and property in which any foreign country or national has any interest, if a situation exists which threatens American national interests. 50 U.S.C. § 1701-1706 (1982); see MALLOY, *supra* note 108, at 159-73 (discussing legislative history, principal provisions, and current uses of IEEPA). To invoke the Presidential powers under the IEEPA, a national emergency must be declared through the issuance of an executive order pursuant to the NEA. 50 U.S.C. § 1601-1651; Joyner, *supra* note 137, at 78. The U.N. Participation Act authorizes the President to apply economic and other sanctions against a target country or a national thereof in accordance with any mandatory decision by the Security Council under Article 41 of the U.N. Charter. 22 U.S.C. 287-287(e) (1945); see MALLOY, *supra* note 108, at 148-59 (outlining legislative history, principal provisions, and current uses of U.N. Participation Act). The Trading with the Enemy Act is another statute that can be used to regulate economic relations but it can only be used after Congress has issued a formal declaration of war. 50 U.S.C. app. §6(b) (1982); see MALLOY, *supra* note 108, at 136-48 (outlining legislative history, principal provisions, and current uses of Trading with the Enemy Act).

167. U.N. CHARTER art. 48, ¶ 2. Article 48 states:

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

U.N. CHARTER art. 48.

168. S.C. Res. 841, *supra* note 2.

169. *Id.*

170. LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 4-5.

1. Haiti Prior to 1991

By 1991, Haiti was the poorest nation in the Western hemisphere.¹⁷¹ Sixty-five percent of Haitian adults were illiterate,¹⁷² Haitian GDP per capita was less than US\$300,¹⁷³ and the top four percent of Haitian households controlled sixty-six percent of the resources.¹⁷⁴ Haiti, however, had once been the crown-jewel in the French empire.¹⁷⁵ Fifty percent of France's transatlantic trade had involved Haiti and nearly twenty percent of the French population depended on trade with Haiti for its livelihood.¹⁷⁶ By the end of the eighteenth century, the colony of Saint Domingue, modern-day Haiti, nearly outproduced all the French and English Carribean colonies put together.¹⁷⁷

The roots of Haiti's socio-economic and political crises derive from Haiti's first days as a colony.¹⁷⁸ The Spanish first introduced African slaves to Santo Domingo in 1501.¹⁷⁹ It was not until Santo Domingo became a French colony in 1697 that there was pervasive use of African slavery to support the growing tobacco, indigo, cacao, and especially sugar industries.¹⁸⁰ The sugar plantations led to the consolidation of lands in the hands of large landowners and gave rise to a class structure that reflected the hierarchy of race and color that slavery engendered.¹⁸¹ A series of slave revolts beginning in 1679 eventually led to the independence of Haiti from France in 1804.¹⁸²

Immediately following its independence, Haiti began its turbulent relationship with the Western powers.¹⁸³ The United States, France, and other European powers refused to recognize the sovereignty of Haiti, thereby isolating Haiti politically and

171. USAID, HAITI: MONITORING REPORT NOVEMBER 1993, at 15.

172. *Id.* at endleaf.

173. *Id.* at 15.

174. Secr tairie d'Etat de la Population d'Ha ti, *Symposium National sur la Population et le D veloppement Humain*, July 1995, at 11 [hereinafter *Symposium National*].

175. BELLEGARDE-SMITH, *supra* note 6, at xviii.

176. *Id.*

177. DUPUY, *supra* note 6, at 21.

178. See Mintz, *supra* note 6, at 73 (stating that Haiti's crisis is historical one).

179. BELLEGARDE-SMITH, *supra* note 6, at 32.

180. DUPUY, *supra* note 6, at 20.

181. See *id.* at 24-50 (outlining class divisions among Haitian society of late seventeenth and eighteenth centuries).

182. *Id.* at 34; BELLEGARDE-SMITH, *supra* note 6, at 41-42.

183. *Id.* at 94-95. See Mintz, *supra* note 6, at 74 (observing that Western powers never forgave Haiti for its revolution).

economically.¹⁸⁴ In exchange for recognizing Haiti, France requested 150 million French Francs and various trade concessions from the new Haitian government.¹⁸⁵ France received approximately half of Haiti's exports in the nineteenth century and made large loans to the Haitian Government to pay the indemnities of former slave owners.¹⁸⁶

By 1903, France's influence had waned, the United States controlled sixty percent of Haiti's imports, and German interests controlled the wholesale sector.¹⁸⁷ During the second half of the nineteenth century, the United States intervened nineteen times in Haiti on behalf of American business interests¹⁸⁸ and sought to gain control through an unsuccessful bid for a military base.¹⁸⁹ Intervention by the United States culminated in the invasion of 1915 and the ensuing U.S. occupation until 1934 by the U.S. marines.¹⁹⁰

Haiti had won its independence but inherited a shattered economy destroyed by the war.¹⁹¹ The temporary nationalism that had helped Haiti win its independence defined itself along racial rather than political lines.¹⁹² The sharp social and cultural divisions emanating from the plantation culture in Haiti's colonial days, resurfaced shortly after Haiti's independence and the unifying nationalism disappeared.¹⁹³

Class divisions emerged, with a French-speaking black and mulatto elite, identifying with French culture and the plantation system of production for export, opposed by a Kreyol-speaking peasant laborer class seeking to protect itself from being turned into another slave work force.¹⁹⁴ Cultural differences sharply reflected the social divisions.¹⁹⁵ The social divisions and each

184. DUPUY, *supra* note 6, at 93-94.

185. *Id.*

186. BELLEGARDE-SMITH, *supra* note 6, at 54.

187. *Id.*

188. *Id.* at 54.

189. *Id.*

190. See DUPUY, *supra* note 6, at 131-42 (discussing reasons for and consequences of U.S. invasion in 1915).

191. *Id.* at 74.

192. *Id.* at 82.

193. *Id.*

194. *Id.* at 83.

195. BELLEGARDE-SMITH, *supra* note 6, at 12-52. The French-speaking westernized elite observed Catholicism and eventually protestantism, whereas the Kreyol-speaking peasantry adhered to Voodoo, a religion brought over from Africa by the slaves. *Id.*

class' attempts to achieve its goals shaped Haiti's social, political, and economic structures throughout the nineteenth and twentieth centuries.¹⁹⁶ By the middle of the twentieth century, the elite remained divided between a subordinate black bourgeoisie and a dominant mulatto bourgeoisie.¹⁹⁷

From an economic standpoint, Haiti remains agriculturally based.¹⁹⁸ In the 1970s and 1980s Haiti expanded into the exports of assembled goods.¹⁹⁹ Haiti, however, has yet to create a domestic basis for the accumulation of capital.²⁰⁰ The Haitian economy's current underdevelopment is due to the lack of modernization of the agricultural sector and to the assembly sector being dominated by foreign investors who repatriated the bulk of the profits.²⁰¹ The United States represents Haiti's main export market, with nearly three-quarters of Haiti's exports, excluding manufactured products, ending up in the United States in 1987 and in 1992.²⁰² Moreover, Haiti has one of the lowest per head energy consumption figures in the world.²⁰³

Haiti and the Vatican negotiated the Concordat of 1860 in an attempt by the Haitian elite to gain recognition. *Id.* at 52. The Agreement consolidated the Roman Catholic Church in Haiti, promoted western education, and strengthened the persecution of Voodoo. *Id.*

196. DUPUY, *supra* note 6, at 82-83.

197. *Id.* at 152-57.

198. *Symposium National*, *supra* note 174, at 9. An estimated two-thirds of the Haitian work force works in the agricultural sector. *Id.* The agricultural sector, however, has a low output and only thirty-one percent of GDP. *Id.*

199. DUPUY, *supra* note 6, at 175. The United States spearheaded the Caribbean Basin Initiative ("CBI") in 1981 to help establish an assembly and manufacturing industry in the Caribbean for export. *Id.* at 174. Dupuy argues that CBI exacerbated rather than alleviated Haiti's poverty because the bulk of the profits were repatriated and it failed to generate the growth of locally owned import-substitution industries in Haiti. *Id.* at 175. The number of assembly enterprises in Haiti grew from 13 companies in 1966, to 127 in 1978, reaching a peak of 200 firms employing sixty thousand workers. DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES 303 (Richard A. Haggerty ed., 2nd ed. 1991). Political instability coupled with the CBI, and the ensuing increase in regional competition, prompted a number of firms to move to Mexico and to the Dominican Republic. *Id.* Approximately twelve thousand jobs were lost as a result of the overthrow of Baby Doc Duvalier. BELLEGARDE-SMITH, *supra* note 6, at 120.

200. DUPUY, *supra* note 6, 180.

201. *Id.* at 179.

202. Economist Intelligence Unit, COUNTRY PROFILE: HAITI 1994-1995, at 46.

203. See World Bank, *Social Indicators of Development*, 1993 246 (1993) (estimating per head energy consumption in Haiti at 49 kg of oil equivalent per year in 1991). In 1994 Haiti's oil requirements amounted to about 6,000 barrels per day. ECONOMIST INTELLIGENCE UNIT, COUNTRY PROFILE: HAITI 1993/94. In fiscal year 1990/91 fuel imports totalled \$68.6 million, 15% of total merchandise imports. *Id.*

Politically, the increasingly fragmented Haitian elite²⁰⁴ saw the State as the best way to serve the interests of their group.²⁰⁵ Despite attempts to create a constitutional governmental framework,²⁰⁶ *coups d'état* and political uprisings became the most common means of installing governments and removing them from power.²⁰⁷ The army came to play a central role in the political process.²⁰⁸ Occasional dictatorships interrupted a long line of brief presidencies throughout the nineteenth and twentieth centuries.²⁰⁹ The father-son dictatorship of François "Papa Doc" and Jean-Claude "Baby Doc" Duvalier lasting from 1957 to 1986 was one of the longest and most repressive of Haitian dictatorships.²¹⁰

The political influence of the Catholic Church increased

204. DUPUY, *supra* note 6, at 99. The Haitian elite consisted of two groups, with a dominant segment of urban residents, rural landed bourgeoisie, holders of state powers and high government functionaries, the high Catholic clergy, financial and commercial bourgeoisie, and a subordinate group of lawyers, judges, high-ranking military officers, doctors, academics, and members of the clergy. *Id.*

205. *Id.* at 117.

206. BELLEGARDE-SMITH, *supra* note 6, at 133. Haiti has had two dozen constitutions between 1801 and 1987. *Id.* at 133-34. The various constitutions led to a Kreyol expression summing up Haitian politics that *Konstitisyon sé papié, bayonet sé fè*, the Constitution is made of paper, bayonets are made of steel. *Id.* at 133. The 1987 constitution divides the power of the executive branch between an elected President and a Prime Minister, in an attempt to avoid the return of more dictatorships. *Id.* at 135. The Constitution emanated from the upper and middle-classes and the Constitution's major provisions came about as a result of intensive lobbying by peasant groups. *Id.* at 135-39. For the first time, Kreyol became an official language, in addition to French, even though only ten percent of Haitians speak French. *Id.* at 137. The repeal of a 1935 decree decriminalized Voodoo, which the majority of Haitians practice. *Id.* The 1987 Constitution was briefly abolished in 1988 during a *coup d'état* and reinstated in 1989 during another one. *Id.* at 138.

207. DUPUY, *supra* note 6, at 117-19.

208. *Id.*

209. See Douglas Farah, *A First in Haiti: Democratic Succession*, WASH. POST, Feb. 8, 1996, at A1 (discussing Haiti's governments). See also Ken Ringle, *The Haunted Land: Haiti's History Has Been Scrawled in Blood, but its People and Art are Etched with Life*, WASH. POST, Oct. 13, 1994, at D1 (reporting on Haitian *coups* and dictatorships).

210. BELLEGARDE-SMITH, *supra* note 6, at 97-108. In 1964, Papa Doc Duvalier drafted a new constitution and declared himself President for Life. DUPUY, *supra* note 6, at 161. Twenty to fifty thousand Haitians are estimated to have been killed during the Duvalier dictatorship. BELLEGARDE-SMITH, *supra* note 6, at 97. By the mid-1960s, eighty percent of Haiti's professionals had fled. *Id.* Papa Doc persecuted the Catholic Church while donating actively to Protestant missions, in an attempt to undermine the power of the Catholic Church in Haiti. *Id.* at 102-3. The Duvaliers did not undertake any projects to improve the Haitian economy and the plight of most Haitians worsened under Baby Doc Duvalier, in power from 1971 to 1986. *Id.* at 104.

over time, particularly during the repression of the Duvalier regime.²¹¹ In the 1980s, the Catholic Church started the *Ti Legliz* movement.²¹² Although initially viewed by the majority of Haitians as an elitist imposter because of its upper-class followers, its pro-Western ideology, and its prior support of the status quo, the Catholic Church became one of the few organized fora in the 1980s for dissidence.²¹³

2. Haiti from 1991-1994

Following the overthrow of President Aristide, the OAS and the United Nations undertook a series of measures ranging from statements condemning the *coup*²¹⁴ to a military intervention that restored President Aristide to power in 1994.²¹⁵ The longest lasting measures consisted of economic sanctions imposed by the OAS and eventually by the United Nations.²¹⁶ The economic sanctions had a wide-ranging impact on the majority of the Haitian population.²¹⁷

a. *Coup d'Etat*

The Duvalier dictatorship ended in February 1986, when Baby Doc Duvalier fled with his wife to France aboard a U.S. military plane.²¹⁸ A succession of military governments assumed power from 1986 to 1990²¹⁹ and the new 1987 Constitution came into being.²²⁰ In March 1990, the then-provisional government requested electoral assistance from the United Nations to elect a Haitian President.²²¹ Jean-Bertrand Aristide, a former Catholic

211. BELLEGARDE-SMITH, *supra* note 6, at 151. See *supra* note 210 (discussing persecution of Catholic Church by Duvaliers).

212. BELLEGARDE-SMITH, *supra* note 6, at 102-103. Consisting of 500 base communities, the *Ti Legliz* movement provided an organizational framework to combat poverty and to allow peasants to challenge the system and demand change. *Id.*

213. *Id.* at 151.

214. *Supra* note 14 and accompanying text.

215. *Supra* note 19 and accompanying text.

216. LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 4 (observing that for nearly three years OAS and United Nations tried to resolve Haiti's crisis by using sanctions and negotiations).

217. *Id.* at 5.

218. Thomas W. Lippman, *Haiti's Tortured History Provided Little on Which to "Re-build"*, WASH. POST, Sept. 19, 1994, at A19.

219. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 9 (outlining four military coups following ousting of Duvalier).

220. Lippman, *supra* note 218, A19.

221. *Electoral Assistance*, *supra* note 13, at 2.

priest,²²² advocating social and economic reform policies, won the December 1990 election and was inaugurated in February 1991.²²³ Aristide quickly implemented a series of social welfare and agrarian reform policies,²²⁴ threatening to reduce the political and economic power of the elite and of the military.²²⁵ In September of 1991, a military triumvirate headed by the Commander-in-Chief of the Haitian army appointed by Aristide, Raoul Cédras, overthrew Aristide with the support and the financial backing of the Haitian elite.²²⁶

b. Initial International Response

The Permanent Council of the OAS immediately issued Resolution 567 following the military's overthrow of Aristide.²²⁷ Resolution 567 condemned the *coup*, demanded that the military restore Aristide to office, and convened an Ad Hoc Meeting of Ministers of Foreign Affairs pursuant to the Santiago Declaration.²²⁸ The Ad Hoc Meeting took place at the beginning of October 1991 and the OAS Ministers of Foreign Affairs, following a speech given by Aristide, adopted the first of four resolutions further condemning the *coup*, recognizing Aristide's government as the legitimate government.²²⁹ The resolution also recommended that states isolate the military regime diplomatically,

222. AMY WILENTZ, *THE RAINY SEASON* 126-128 (1989). Aristide had previously been a priest in the Salesian order in Port-au-Prince, working with poor urban slum dwellers, especially in *Cité Soleil*, one of Haiti's worst slums. *Id.* The Salesians kicked Aristide out of the order in 1988 for having advocated class struggle. *Id.* Aristide went on to join the ranks of the proactive priests who would come to form the *Ti Legliz* movement. *Id.*; see *supra* note 212 and accompanying text (describing origins and role of *Ti Legliz* in Haiti).

223. Lippman, *supra* note 218, A19.

224. *Id.*

225. *Id.*

226. *Id.* See Rick Bragg, *Haiti's Light-Skinned Elite: The Tiny Minority Behind Aristide's Ouster*, N.Y. TIMES, Aug. 28, 1994, at 14 (reporting on Haitian elite and its support of Aristide's overthrow).

227. OAS Res. 567, in *FOREIGN POL'Y BULL.* 61 (Nov./Dec. 1991).

228. *Id.*

229. MRE/Res 1/91, *supra* note 14. The Resolution stated that the Ad Hoc Meeting of Ministers of Foreign Affairs resolved:

3. To recognize the representatives designated by the constitutional Government of President Jean-Bertrand Aristide as the only legitimate representatives of the Government of Haiti to the organs, agencies, and entities of the Inter-American system.
4. To urge the Inter-American Commission on Human Rights, in response to President Jean-Bertrand Aristide's request, to take immediately all meas-

suspend all financial, economic and commercial ties to Haiti, and that aid to Haiti, including military, police, or security assistance be suspended.²³⁰ The second resolution, adopted five days later, reiterated the measures and expanded on the human rights issue, setting the groundwork for an OAS civilian mission to monitor human rights and to facilitate the reestablishment and strengthening of democratic institutions.²³¹ The OAS wanted to convey to the *de facto* military government that there was no alternative to a negotiated settlement.²³² In 1992, the Ad

ures within its competence to protect and defend human rights in Haiti and to report thereon to the Permanent Council of the Organization.

5. To recommend, with due respect for the policy of each member state on the recognition of states and governments, action to bring about the diplomatic isolation of those who hold power illegally in Haiti.
6. To recommend to all states that they suspend their economic, financial, and commercial ties with Haiti and any aid and technical cooperation except that provided for strictly humanitarian purposes.
7. To request the Secretary General of the Organization to pursue efforts to increase the Inter-American Fund for Priority Assistance to Haiti, but to refrain from using it so long as the present situation prevails.
8. To recommend to the General Secretariat of the Organization the suspension of all assistance to those who hold power illegally in Haiti and to request the regional organs and institutions. . . to adopt the same measure.
9. To urge all states to provide no military, police, or security assistance of any kind and to prevent the delivery of arms, munitions, or equipment to that country in any manner, public or private.

Id. Marc Bazin, who ran against Aristide in the 1990 elections and was briefly Prime Minister under the *de facto* military government, wrote in *Démocratie sous Pression* that the OAS' primary concern had not so much been the fate of democracy in Haiti but rather its fate in Latin America. MARC BAZIN, *DÉMOCRATIE SOUS PRESSION*, 174 (1995). To that end the OAS wanted to use Haiti as an example and therefore applied the sanctions rather hastily, anticipating that they would take effect immediately. *Id.* He noted, that from that point on, the OAS could only go backwards and make concessions. *Id.* The OAS did not have enough leverage to negotiate, particularly between two parties who were not willing to negotiate. *Id.*

230. MRE/Res 1/91, *supra* note 14.

231. MRE/Res 2/91, *supra* note 14.

232. *Id.* The OAS Ministers' views gradually shifted as to what role the United Nations should play in resolving the Haitian crisis. MRE/Res 1/91, *supra* note 14; MRE/Res 2/91, *supra* note 14; OAS Ministers of Foreign Affairs, MRE/Res 3/92 (1992); OAS Ministers of Foreign Affairs, MRE Res 4/92 (1992). The first resolution sought to notify the United Nations of the action taken by the OAS. *See* MRE/Res 1/91, *supra* note 14 (stating in operative paragraph that Ministers had resolved "to transmit this resolution to the United Nations and its specialized Agencies and to urge them to consider its spirit and aims"). The second resolution sought a more active role for the United Nations. *See* MRE/Res 2/91, *supra* note 14 (resolving "to transmit this resolution to the United Nations and to request its Member states to adopt the same measures agreed upon by the American states"). A third resolution requested that the United Nations help implement the measures listed in the resolution. MRE/Res 3/92, *supra*

Hoc Meeting of Ministers of Foreign Affairs adopted two additional resolutions.²³³

By nature, the OAS is a regional organization limited in its geographic²³⁴ and legal scope.²³⁵ As a regional organization, the OAS cannot resort to enforcement action without the consent of the U.N. Security Council, nor can it use coercive means.²³⁶ The OAS sanctions imposed on Haiti were not mandatory and were only partially applied by OAS member states.²³⁷ The United States, for instance, was one member state to partially lift the sanctions it had imposed on Haiti pursuant to the OAS Resolutions.²³⁸

c. U.N. Response

The United Nations ultimately responded to the Haitian *coup d'état* with a gamut of sanctions ranging from voluntary to

note 232. A fourth resolution called for the consideration "of the possibility and advisability of bringing the Haitian situation to the attention of the United Nations Security Council as a means of bringing about global application of the trade embargo recommended by the OAS." MRE/Res 4/92, *supra* note 232.

233. MRE/Res 3/92, *supra* note 232; MRE/Res 4/92, *supra* note 232.

234. OAS CHARTER, *supra* note 30, art. 1.

235. *Id.*

236. U.N. CHARTER art. 53, *supra* note 135.

237. LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 24.

238. See *Testimony of Donna Hrinack, Deputy Assistant Secretary for the Caribbean and Mexican Affairs, Before the Subcomm. on Western Hemisphere Aff. of the House Foreign Aff. Comm.*, February 19, 1992 (giving reasons for lifting of embargo by United States) [hereinafter *Donna Hrinack Testimony*]. By February of 1992, the United States began stepping away from its obligation to maintain the sanctions, by lifting the constraints it had initially imposed on American companies with assembly factories in Haiti ("807 companies"). *Id.*

These components and products do not enter Haitian commerce — Haiti simply provides the labor to assemble them. Our action does not open or resume general commerce with Haiti. I want to stress that we took this action precisely out of concern for the effect the embargo was having on poor Haitian workers employed by these companies — or not employed, which was increasingly the case — and on the families that depend on their wages. We, likewise, acted to prevent what we concluded would have been disastrous and lasting damages to the Haitian economy through the bankruptcy of the 807 companies or their shift to third countries. At the time we imposed the embargo, we weighed very carefully the impact it would have on the 807 sector. From firsthand experience, I can assure the Committee that we agonized for days, knowing the harm that would come to the 40,000 employees and up to 250,000 dependents and to the future of one of the few really bright spots of the economy. To lessen the impact, we granted that sector a 30-day grace period during which companies could continue to ship materials and assembled goods to and from Haiti.

Id.

mandatory selective and comprehensive measures.²³⁹ The OAS and the United Nations applied a three-tiered system of political, economic, and aid-related sanctions against the *de facto* military government.²⁴⁰ All three of the components sought to pressure the *de facto* government to step down, restore democracy, and respect human rights.²⁴¹

i. General Assembly Resolutions

Pursuant to Articles 10 and 14 of the U.N. Charter, the United Nations General Assembly adopted a series of Resolutions²⁴² in conjunction with the various OAS Resolutions.²⁴³ The U.N. General Assembly adopted two types of resolutions between October of 1991 and December of 1992.²⁴⁴ Interspersed among the second set of resolutions were the Secretary-General's reports written pursuant to these same resolutions, describing in greater detail the situation in Haiti.²⁴⁵ Three General Assembly

239. See HARVARD CENTER FOR POPULATION AND DEVELOPMENT STUDIES, SANCTIONS IN HAITI: CRISIS IN HUMANITARIAN ACTION ii (Program on Human Security Working Paper Series, 1993) [hereinafter, *THE REPORT*] (outlining types of sanctions imposed on Haiti).

240. *Id.*

241. *Id.*

Political sanctions sought to isolate and de-legitimize the *de facto* government, mostly through diplomatic ostracism. The economic embargo aimed to cripple the economy by freezing overseas financial assets and blocking international trade. The withholding of foreign aid or the shift from development to strictly humanitarian aid also had the purpose of punishing the *de facto* government.

Id. The Security Council eventually added a fourth tier of communications sanctions by adopting Resolution 917 and banning commercial flights. S.C. Res. 917, *supra* note 3.

242. G.A. Res. 46/7, *supra* note 15; G.A. Res. 47/20A, *supra* note 16; G.A. Res. 46/138, U.N. GAOR, 46th Sess., Agenda Item 98, U.N. Doc. 46/138 (1991); G.A. Res. 47/143, U.N. GAOR, 47th Sess., Agenda Item 97, U.N. Doc. A/RES/47/143 *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 251-252; G.A. Res. 47/20B, *supra* note 15.

243. MRE Res. 1/91 *supra* note 14; MRE Res. 2/91 *supra* note 14; MRE Res. 3/92 *supra* note 232.

244. G.A. Res. 46/7, *supra* note 15; G.A. Res. 47/20A, *supra* note 16. One set of resolutions focused on (1) promoting the use of OAS sanctions, (2) enticing to entice the military in Haiti to step down by promising an increase in aid once the constitutional government regained power, and (3) strengthening democratic institutions in Haiti. *Id.* The second set discussed the violation of human rights in Haiti, called for an increase in humanitarian assistance and focused on the issue of refugees and boat people. G.A. Res. 46/138, *supra* note 242; G.A. Res. 47/143, *supra* note 242; G.A. Res. 47/20B, *supra* note 15. Unlike the first type, these resolutions did not mention the OAS resolutions. *Id.*

245. *The Situation of Democracy and Human Rights in Haiti: Report of the Secretary General*, U.N. GAOR, 47th Sess., Agenda Item 22, U.N. Doc. A/47/599 (1992); *The Situation*

resolutions constituted the extent of the United Nations' efforts to settle the dispute through pacific means.²⁴⁶

Unless the Security Council finds that a situation threatens international peace and security, the Council is limited to finding a pacific settlement to the situation and may not resort to coercive measures under Chapter VII of the U.N. Charter.²⁴⁷ The OAS and the U.N. General Assembly resolutions paved the way for establishing Haiti as a threat to international peace and security, and established a framework for the adoption of Security Council resolutions under Chapter VII of the U.N. Charter.²⁴⁸ By the end of 1992, the United Nations had exhausted most non-

of Democracy and Human Rights in Haiti: Report of the Secretary General, U.N. GAOR, 47th Sess., Agenda Item 22, U.N. Doc. A/47/908 (1993).

246. G.A. Res. 46/7, *supra* note 15; G.A. Res. 46/138, *supra* note 242; G.A. Res. 47/20A, *supra* note 16. Adopted October 12, 1991, the first United Nations General Assembly resolution, Resolution 46/7 followed on the heels of the second OAS resolution, Resolution 2/91, and responded to the OAS Ministers' request that the Member states of the United Nations adopt the same measures as the OAS Member states. G.A. Res. 46/7, *supra* note 15. Resolution 46/7 condemned the coup and the violation of human rights, acknowledged Aristide's government as the legitimate government, and called on Member States to comply with the measures established by the OAS. *Id.* The resolution also provided for an increase in economic and social development aid to strengthen Haiti's democratic institutions. *Id.* The following resolution, entitled *Human Rights in Haiti* adopted at the end of 1991 focused on human rights violations and on the refugees fleeing the country due to violations. G.A. Res. 46/138, *supra* note 242. On November 24, 1992, the U.N. General Assembly adopted Resolution 47/20A detailing which goods Member States should embargo, reiterating that increased aid was forthcoming once constitutional order returned, and urging U.N. Member States and other international organizations to increase their humanitarian assistance. G.A. Res. 47/20A, *supra* note 16.

247. U.N. CHARTER art. 39. Under Chapter VI of the U.N. Charter, which pertains to the pacific settlement of disputes, the Security Council may (1) call upon parties to settle their dispute through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or to resort to regional agencies, or other peaceful means, (2) investigate, (3) recommend appropriate procedures or methods of adjustment, or refer legal disputes to the ICJ, (4) if the dispute could not be settled by the ICJ, (a) take action pursuant to Article 36, or (b) recommend terms of settlement it considers appropriate, and (5) make recommendation to the parties with a view to a pacific settlement of the dispute. U.N. CHARTER arts. 33, 34, 36-38.

248. G.A. Res. 47/20A, *supra* note 16. The final *Situation of Democracy and Human Rights* resolution of 1992, stated in its seventh preambular paragraph:

Concerned that the persistence of this situation *contributes to a climate of fear of persecution and economic dislocation* which could increase the number of Haitians seeking refuge in neighboring Member States and convinced that a reversal of this situation is needed to prevent its negative repercussions on the region.

Id. (emphasis added); see also MRE Res 1/91, *supra* note 229 (referring to Haiti's coup as threat to democracy in region).

Chapter VII measures.²⁴⁹ In a speech to the United Nations General Assembly in September 1992, Aristide called for a stronger embargo and an end to the import of weapons, even if a blockade were necessary.²⁵⁰

ii. Security Council Resolutions: Selective Mandatory Measures

By early 1993, the deteriorating situation in Haiti highlighted the need to put stronger pressure on the *de facto* military government.²⁵¹ In June 1993, the General Assembly forwarded the issue of the Haitian crisis to the Security Council pursuant to Article 11(3) of the U.N. Charter.²⁵² The Security Council ultimately intervened at the behest of Aristide and the *de jure* government,²⁵³ thereby eliminating any potential problems regarding unlawful intervention under Article 2(7) of the U.N. Charter.²⁵⁴ Following the *de jure* government's consent to impose

249. LES NATIONS UNIES ET LA SITUATION EN HAÏTI, *supra* note 16, at 1-2. Dante Caputo, nominated in December of 1992, proceeded with his negotiations but did not get very far in drawing the two camps of the *de facto* and *de jure* governments together. *Id.* at 2. In late March 1993, the United Nations made progress in creating MICIVIH, to try to resolve Haiti's political crisis, but the international community still wavered. *Id.* at 4-5.

250. Address to the General Assembly by President Jean-Bertrand Aristide, Sept. 29, 1992 (A/47/PV.17).

251. AGENCE HAÏTIENNE DE PRESSE, 1993 AU QUOTIDIEN, 7-17 (1994). In January 1993, the *de facto* government had called for elections of one third of the Senate. *Id.* The OAS had immediately condemned the elections as illegitimate, and the Secretary-General of the United Nations had requested that the *de facto* government cancel the elections. *Id.*

252. U.N. CHARTER, art. 11, ¶ 3. "The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security." *Id.*

253. See Letter from the Permanent Representative of Haiti to the President of the Security Council (June 7 1991), U.N. SCOR, U.N. Doc. S/25958 (1993) *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 303 (asking that U.N. Security Council make mandatory and universal OAS sanctions) [hereinafter *June 7 Letter*].

254. U.N. CHARTER, art. 2, ¶ 7. See *June 7 Letter*, *supra* note 253 (stating that resolving Haiti's crisis would promote stability in region and strengthen international peace and security). Fritz Longchamp, Haiti's Permanent Representative to the United Nations, requested that

the Security Council make universal and mandatory the sanctions against the *de facto* authorities adopted at the Ad Hoc Meeting of Ministers for Foreign Affairs of the Organization of American States and recommended to the international community in various General Assembly resolutions, giving priority to the embargo on petroleum products and the supply of arms and munitions.

Id. See also *supra* note 125 and accompanying text (discussing role of consent given by targeted state to intervene).

sanctions,²⁵⁵ the Security Council decided to proceed under Chapter VII of the U.N. Charter, and unanimously adopted Resolution 841.²⁵⁶

Resolution 841, similarly to the previous General Assembly resolutions, set forth measures which were consistent with the trade embargo recommended by the OAS.²⁵⁷ Acting under Chapter VII, and recalling Chapter VIII and the need for cooperation between the United Nations and regional organizations, the Security Council asserted that the continuation of humanitarian crises, economic displacement, and a climate of fear and persecution threatened international peace and security.²⁵⁸ Res-

255. *June 7 Letter*, *supra* note 253.

256. S.C. Res. 841, *supra* note 2.

257. *Id.*

258. *Id.* Because Aristide was calling for mandatory measures which would have to be taken under Article 41, the Security Council, as a procedural obligation, had to find that the crisis in Haiti constituted a threat to international peace and security. U.N. CHARTER art. 39; *June 7 Letter*, *supra* note 253. The United States, since September 1991, had referred to the international problems Haiti was causing particularly for the United States. *Donna Hrinack Testimony*, *supra* note 238. In her testimony, Donna Hrinack gave four reasons why the United States needed to help Haiti, notably that 1) the United States had a humanitarian obligation to the people of Haiti, 2) the situation in Haiti had a direct, material impact on other areas of interest to the United States, particularly the boat people issue, 3) to curb drug trafficking, and 4) the overthrow of Aristide was a setback to the consolidation of democracy throughout the hemisphere. *Id.* President Clinton's administration put forth slightly different set of reasons than the Bush Administration to justify the United States' action in Haiti, notably that the United States

must protect American lives. . . . want[s] to avoid a mass exodus of Haitians fleeing political persecution at great risk to themselves and at great potential cost and disruption to the United States and to other nations. . . . to help restore democracy in Haiti and thereby promote democracy throughout the hemisphere.

PRESS RELEASE FROM THE WHITE HOUSE, Oct. 18, 1993. The boat people were the primary concern for the United States because they could have had a direct impact on the United States, particularly Florida. See Rick Eyerdam, *Amid a Tempest of Concerns, a Regional Recovery Blossoms*, S. FLA. BUS. J., Dec. 28, 1992, at 3 (discussing potential impact of influx of Haitian immigrants on Florida's economy). Boat people refers to the poor Haitians who fled Haiti on overcrowded boats, mostly since Aristide's overthrow in 1991, to try and come to the U.S. or to be picked up by the U.S. Coast Guard. Thomas D. Jones, *The Haitian Refugee Crisis: A Quest for Human Rights*, 15 MICH. J. INT'L L. 77, 92-93. The Boat People eventually came to cost the American taxpayer a large amount of money. William E. Gibson, *Cost of Refugee Crisis Climbs*, SUN-SENTINEL, Oct. 30, 1994, at 1. From 1993 to 1994 the Pentagon and U.S. Coast Guard spent "over \$250 million to seize, process, detain, and transport Haitian boat people." *Id.* The United States, however, as well as other members of the United Nations, came to see the boat people as the result of the dire circumstances prevailing in Haiti, especially the social and economic circumstances, as reflected in the fact that the majority of the boat people who had hearings were returned to Haiti because they were considered to be economic and

olution 841 called for selective measures to resolve Haiti's crisis and imposed an oil and arms embargo on Haiti.²⁵⁹ Resolution 841 froze the assets of the Government of Haiti as well as of the *de facto* authorities and prohibited all traffic from entering Haitian territory carrying any armaments or petroleum products.²⁶⁰ The Resolution called upon U.N. Member States to implement it properly.²⁶¹ The Security Council set up a Sanctions Committee to monitor and facilitate the implementation of the sanctions called for by the Resolution.²⁶² The Resolution included a clause to allow for the delivery of fuel for humanitarian purposes.²⁶³ The long-term purpose of the United Nations' policy was to reinstate democracy in Haiti through negotiations.²⁶⁴ The purpose of the sanctions therefore was to facilitate the negotiation process and give Dante Caputo²⁶⁵ some leverage with which to force the military to the negotiating table.²⁶⁶

The Security Council intended the sanctions to be short

environmental as opposed to political refugees. See Jones, *supra* note 258, at 86 (arguing that although Haitian refugees were more often characterized as economic emigrants, Haiti's poor human rights record is sufficient evidence that many Haitian refugees probably satisfied criteria for political refugee status).

259. S.C. Res. 841, *supra* note 2, at ¶ 5. Resolution 841 prohibited the: sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of petroleum or petroleum products or arms or related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, whether or not originating in their territories, to any person or body in Haiti or to any person or body for the purpose of any business carried on in or operated from Haiti, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply.

Id.

260. *Id.*

261. *Id.* at ¶ 9.

262. *Id.* at ¶ 10.

263. *Id.* at ¶ 7.

264. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 4 (stating that international community used sanctions to aid process of negotiations).

265. See *supra*, note 16 (discussing role of Dante Caputo as Special Envoy).

266. United Nations Security Council, *Provisional Verbatim Record of the Three Thousand Two Hundred and Thirty-Eighth Meeting*, S/PV.3238, 16 June 1993, at 14 [hereinafter *Provisional Verbatim Record*]. Venezuela's representative to the Security Council, Mr. Arria, outlined the previous efforts by both the OAS and the United Nations prior to Resolution 841 and said that the United Nations had a duty to restore Aristide to power as part of the democratization process it had begun when it monitored the 1990 elections. *Id.* Arria reiterated that the embargo was not "...an end in itself, but...a means to give [Dante Caputo] an additional deterrent so that the negotiations will continue and will achieve the goal we all seek." *Id.*

term instruments.²⁶⁷ Resolution 841 was scheduled to go into effect on June 23, 1993 unless the military began negotiations with Dante Caputo.²⁶⁸ The sanctions imposed pursuant to Resolution 841 came into effect on June 23, 1993, but by June 27, Raoul Cédras, the nominal head of the *de facto* government, and President Aristide agreed to meet in New York.²⁶⁹ On July 3, 1993, Cédras and Aristide signed the Governors Island Agreement (the "Agreement").²⁷⁰ The parties to the Agreement agreed that once the Haitian Parliament confirmed the appointment of a Prime Minister of Aristide's choice, the United Nations and the OAS would suspend their sanctions.²⁷¹ The Haitian Parliament approved Aristide's candidate, Robert Malval, on August 25, 1993.²⁷² Acting under Chapter VII and unanimously adopting Resolution 861 on August 27, 1993, the Security Council suspended the measures it had called for under Resolution 841.²⁷³ Resolution 861 also maintained the possibility of reimposing sanctions, should any party to the agreement fail to meet its obligations.²⁷⁴

In August 1993, the United Nations proceeded to adopt Resolution 862 to send an initial contingent of U.N. civilian police and military assistance to Haiti to lay the groundwork for UNMIH²⁷⁵ to modernize the Haitian armed forces.²⁷⁶ By Sep-

267. *Id.* Despite the differences of the Security Council members as to the issues they wanted to stress surrounding the sanctions, the member states generally agreed that the measures were necessary and needed to be temporary and very short-term. *Id.*

268. S.C. Res. 841, *supra* note 2.

269. LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 5.

270. Governors Island Agreement, *supra* note 16.

271. *Id.*

272. 1993 AU QUOTIDIEN, *supra* note 251, at 90.

273. S.C. Res. 861, U.N. SCOR, 3271st mtg., U.N. Doc. S/RES/861 (1993).

274. *Id.* at ¶ 2.

275. See *supra* note 19 (outlining evolution of UNMIH and of its mandate).

276. S.C. Res. 862, U.N. SCOR, 3272nd mtg., U.N. Doc. S/Res/862 (1993). Madeleine Albright, speaking after the Resolution was adopted, said that the Resolution marked a crucial next step in the process envisioned by the Governor's Island Agreement. That process was not a 'quick fix'. The parties recognized that a lasting settlement in Haiti required fundamental changes, and that the process the international community had helped them to establish provided the opportunity to make those changes in an orderly and peaceful manner.

The provision of United Nations military and police personnel was vital to the reorientation and rebuilding of Haiti. The international community's commitment would not end with the restoration of constitutional government, but would continue until democratic institutions were firmly in place. The modernization of Haiti's armed forces, and the creation of a distinct and

tember of that year, the situation in Haiti deteriorated rapidly as the violence increased.²⁷⁷ On September 17, 1993, the President of the Security Council made a statement condemning the violence and recalling that, should the Secretary General feel it was necessary to reimpose sanctions because of serious non-compliance with the Agreement, the Security Council was prepared to do so.²⁷⁸ The Harlan County, the ship bringing the initial contingent of personnel to Haiti pursuant to Resolution 862, did not dock in Port-au-Prince, following the demonstrations at the dock by *attachés* on October 11, 1993.²⁷⁹

On October 13, 1993, the Security Council adopted Resolution 873, reversing the suspension of 841 and allowing funds frozen pursuant to Resolution 841 to be released at the request of Aristide or Malval.²⁸⁰ The Security Council also stated its readiness to consider other measures if necessary.²⁸¹ The assassination of Haitian *de jure* Minister of Justice Guy Malary, in broad daylight on October 14, 1993²⁸² prompted Aristide to write a letter on October 15 to the Secretary General requesting that the United Nations strengthen the provisions already in place under Resolution 873.²⁸³ On October 16, 1993, reaffirming its readiness to consider other measures, the Security Council adopted Resolution 875, requesting that Member States strictly enforce the sanctions called for by Resolutions 841 and 873.²⁸⁴ When

professional civilian police, in the context of reform of the entire system of justice, were among Haiti's most pressing goals.

United Nations Security Council, Press Release/Background Note, SC/5693, Aug. 31, 1993.

277. Howard French, *Public Killing Defines Barriers to Aristide's Return*, N.Y. TIMES, Sept. 26, 1993, at A24.

278. United Nations Security Council, *Note by the President of the Security Council*, U.N. SCOR, 3278th mtg., U.N. Doc. S/26460 (1993).

279. Howard French, *Haitians Block Landing of U.S. Forces*, N.Y. TIMES, Oct. 12, 1993, at A1.

280. S.C. Res. 873, U.N. SCOR, 3291st mtg., U.N. Doc. S/RES/873 (1993).

281. *Id.*

282. Howard French, *Haiti Justice Minister Slain in Defiance of U.S. Warning to Military to Keep Peace*, N.Y. TIMES, Oct. 15, 1993, at A1.

283. *Letter dated 15 October 1993 from the President of Haiti Jean Bertrand Aristide to the Secretary General*, U.N. SCOR, U.N. Doc. S/26587, (1993), reprinted in LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 333.

284. S.C. Res. 875, U.N. SCOR, 3293rd mtg., U.N. Doc. S/RES/875 (1993). In particular, Resolution 875 stated that Member States should stop, as necessary, all ships headed towards Haiti to inspect and verify their cargoes. *Id.* The Resolution did not specify which Member State(s) would supply the monitoring ships but the United States did most of the intercepting. 1993 AU QUOTIDIEN, *supra* note 251, at 115. Officially

adopting Resolutions 873 and 875, the Security Council changed the wording and the meaning of what constituted a threat to international peace and security and expressly blamed the military *de facto* government for the Haitian crisis.²⁸⁵

iii. Comprehensive Mandatory Measures

Resolution 875 remained in effect until May 6, 1994, during which time Dante Caputo shuttled to and from Haiti to negotiate a political truce²⁸⁶ and the United Nations attempted to reconfigure and deploy UNMIH.²⁸⁷ By November of 1993, Aristide began requesting that the United Nations strengthen the embargo.²⁸⁸ Whereas the previous Security Council resolutions sought only to deprive Haiti of select goods,²⁸⁹ the Security Council changed its strategy in May 1994 and imposed comprehensive sanctions.²⁹⁰ On May 6, 1994, the Security Council adopted Resolution 917, imposing comprehensive sanctions

known as the Maritime Interdiction Force, the flotilla of ships monitoring the waters off Haiti came to be seen by the Haitian press and eventually the majority of Haitians as a maritime blockade of Haiti. *Id.* at 113.

285. S.C. Res. 873, *supra* note 280; S.C. Res. 875, *supra* note 284. Under both resolutions, the military officials' "failure to fulfill their obligations under the Agreement constitutes a threat to peace and security in the region." *Id.*

286. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 49-50 (describing attempts by Dante Caputo to negotiate with Haitian military in Haiti).

287. See *id.* at 55 (stating that Security Council requested that Boutros-Ghali draw up plans for 'appropriate' UNMIH force to send to Haiti when situation permitted); see *id.* at 56 (declaring that despite UNMIH's inability to fulfill its mandate because of lack of cooperation from Haitian military, U.N. Security Council extended UNMIH's mandate in order to redeploy UNMIH).

288. See Fritz Longchamp's comments in *Minutes to the Security Council's 3376th Meeting Following the Adoption of Resolution 917*, U.N. SCOR, U.N. Doc. SC/5841, (1994) (discussing Aristide's request); see also Michael D. Barnes, *Counsel to Aristide, Testimony Before the Senate Foreign Relations Comm.*, March 8, 1994 (suggesting that United Nations should impose more stringent sanctions). "Some worry that increasing the commercial sanctions on Haiti will irrevocably destroy it. This concern is well intentioned but misguided Our refusal to toughen sanctions prolongs the crisis and the reign of terror. It also prolongs ordinary Haitians' poverty and misery." *Id.*

289. See S.C. Res. 841, *supra* note 2 (asking that U.N. Member States prevent sale or supply of petroleum and petroleum products, weapons and ammunition, and other military equipment to any person or body in Haiti).

290. See S.C. Res. 917, *supra* note 3 (announcing that U.N. Member States should ban all non-commercial flights to or from Haiti, deny entry into their territory of Haitian military or police officers and their families, major participants in coup and their families, members of illegal government and their families, and persons employed by or acting on behalf of military, freeze assets of all those individuals, halt all imports to and exports from Haiti, and halt inward and outward maritime shipping to inspect cargoes).

targeted primarily at the *de facto* government and its supporters.²⁹¹ The United Nations announced that it would not lift Resolution 917 unless certain conditions were met,²⁹² notably that Raoul Cédras, the Commander-in-Chief of the Haitian Armed Forces retire,²⁹³ that the measures called for under the Governors' Island Agreement take effect,²⁹⁴ that UNMIH be able to fulfill its mandate in Haiti,²⁹⁵ and that Aristide return to Haiti with constitutional order assured.²⁹⁶

Resolution 917 also expanded on the duties of the Sanctions Committee to enable it to verify Member States' compliance with these latest measures.²⁹⁷ Similarly to Resolution 841, setting out guidelines for the Sanctions Committee, Resolution 917 did not mention the need to monitor the impact of sanctions on Haiti.²⁹⁸ The Sanctions Committee's concern lay in the implementation of the Resolution rather than its effect on the Haitian population.²⁹⁹

On July 11, 1994, the *de facto* government, defying the United Nations and the international community at large, ordered the MICIVIH to leave.³⁰⁰ At the end of July, the Security Council adopted Resolution 940, authorizing the invasion of Haiti by a multinational force, should the circumstances warrant it.³⁰¹ The Haitian military authorities reacted to the threat of military force and quickly settled on an agreement brokered in September by former U.S. President Carter, former U.S. Chief of Staff Powell, and U.S. Senator Nunn.³⁰² On September 29, 1994,

291. *Id.*

292. *Id.* at ¶ 18.

293. *Id.* at ¶ 18(a).

294. *Id.* at ¶ 18(b) and (c).

295. *Id.* at ¶ 18(d).

296. *Id.* at ¶ 18(e).

297. *Id.* The Sanctions Committee, for instance had to maintain a list of the Haitians prohibited from travelling outside of Haiti. *Id.* at ¶ 3. The Sanctions Committee also was given a series of other tasks such as clearing flights to Haiti containing humanitarian aid. *See id.* at ¶ 14 (listing Sanctions Committee's tasks).

298. *Id.*

299. *See id.* at ¶ 14(g) (requiring Sanctions Committee to examine sender Member States's request for assistance pursuant to Article 50). *See also* U.N. CHARTER, art. 50, *supra* notes 157-161 and accompanying text (discussing Article 50).

300. LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 56.

301. S.C. Res. 940, *supra* note 16. In the resolution, the Security Council referred to the "deteriorating, complex and extraordinary nature" of Haiti's situation. *Id.* at ¶ 2.

302. *See* Rohter, *supra* note 8 (discussing settlement negotiated with Haitian *de facto* government by Carter, Powell, and Nunn).

the Security Council voted to remove the sanctions once Aristide returned to Haiti.³⁰³ Resolution 944 effectively ended the U.N. Security Council's sanctions policy toward Haiti.³⁰⁴

iv. Sanctions Committee and *Ad Hoc* Committee

With the adoption of the Security Council resolutions, the United Nations had to construct an *ad hoc* framework to monitor the implementation of sanctions.³⁰⁵ Pursuant to Resolution 841, the Security Council established a Sanctions Committee concerning Haiti, a subsidiary body of the Security Council, consisting of all the members of the Council.³⁰⁶ The Committee, as do all U.N. Sanctions Committees, held its sessions behind closed doors and made little information available to the general public.³⁰⁷

Sanctions Committees generally draw up guidelines to facilitate their work and to help Member States and international organizations with the implementation of the sanctions.³⁰⁸ The Sanctions Committee established pursuant to Resolution 841, issued a set of guidelines to provide a framework for carrying out its assigned tasks.³⁰⁹ Member States in turn were responsible for implementing the sanctions.³¹⁰ The Sanctions Committee would monitor the implementation process through the submission of reports by Member States.³¹¹ In the case of sanctions imposed on Haiti, few Member States actually submitted reports to the Committee following the adoption of Resolution 841.³¹² The Se-

303. S.C. Res. 944, U.N. SCOR, 3430th mtg., U.N. Doc. S/RES/944 (1994).

304. *Id.*

305. See Ngobi, *supra* note 25, at 22 (discussing creation of sanctions committees by Security Council to monitor implementation of sanctions).

306. S.C. Res. 841, *supra* note 2, at ¶ 10. The Security Council outlined the Sanctions Committee's obligations in Resolution 841, at ¶ 10, Resolution 873 at ¶ 3, and Resolution 917 at ¶ 3, ¶ 7(b), ¶ 8 and ¶ 14. *Id.*; Res. 873, *supra* note 280, at ¶ 3; Res. 917, *supra* note 3, at ¶s 3, 7(b), 8, 14.

307. See Ngobi, *supra* note 25, at 22 (writing that sanctions committees conduct business behind closed doors so as to not embarrass states violating sanctions).

308. *Id.*

309. Telephone Interview with Mr. Gianluca Burci, Legal Officer, U.N. Office of Legal Affairs (July 23, 1997). The Sanctions Committee's guidelines are a restricted document and are unavailable to the public. *Id.*

310. S.C. Res. 841, *supra* note 2, at ¶ 13.

311. Ngobi, *supra* note 25, at 22.

312. See *Note by the Secretary General*, U.N. SCOR, U.N. Doc. S/26173 (1993) *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 313 (listing Member States submitting reports). In paragraph 13 of Resolution 841 (1993) for instance, the Security Council

curity Council eventually called on all international organizations to help implement the sanctions.³¹³

The United Nations, in conjunction with the OAS, also created a local mechanism in Haiti to monitor the allocation of fuel for humanitarian purposes.³¹⁴ The mechanism came into existence after the adoption of Resolution 875 and began functioning in January 1994.³¹⁵ Established by the United Nations and the OAS, a committee known as *Programme D'approvisionnement en Combustible pour les Activités Humanitaires*³¹⁶ ("PAC-Humanitaire" or "PAC") regulated the allocation of the fuel allowed in under the embargo for humanitarian purposes.³¹⁷ The PAC's objective was to minimize repercussions of the embargo on the health and nutrition of the most vulnerable segments of the Haitian popula-

had requested that all states report to the Secretary-General by July 16, 1993 on the measures they had initiated for meeting the obligations set out in 841. S.C. Res. 841, *supra* note 2, ¶ 13. As of July 26, 1993, only 16 replies had been received including those from the United States and Switzerland, which is not a member of the United Nations. *Note by the Secretary General*, U.N. SCOR, U.N. Doc. S/26173 (1993) *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 313. By August 30, 1993, three days after Resolution 841 had been suspended, only twenty-six members had replied. *Note by the Secretary-General: Addendum*, U.N. SCOR, U.N. Doc. S/26173/Add.1 (1993) *reprinted in* LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 313. Neither the major oil producing states nor the Dominican Republic, Haiti's neighbor and main source of black market goods were on the Secretary-General's list. *Id.*; see *Pas d'Intervention en Haïti avant la mi-Septembre*, *Selon le Washington Post*, LE MATIN, Aug. 6-10, 1994, at 1 (citing statistic that by 1994, 30 per cent of Haiti's energy needs during embargo came over Dominican Republic border).

313. S.C. Res. 917, *supra* note 3, ¶ 12. The Security Council called upon all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution and the earlier relevant resolutions, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license permit granted to prior to the effective date of the measures in this resolution or earlier relevant resolutions.

Id.

314. ORGANIZATION OF AMERICAN STATES/UNITED NATIONS, PROGRAMME D'APPROVISIONNEMENT EN COMBUSTIBLE POUR LES ACTIVITÉS HUMANITAIRES: BROCHURE EXPLICATIVE (1994) 1 [hereinafter BROCHURE EXPLICATIVE].

315. *Le PAC Humanitaire Arrête ses Activités*, LE NOUVELLISTE, Oct. 27, 1994, at 1 (reporting that Programme d'Approvisionnement en Combustible pour les Activités Humanitaires ("PAC-Humanitaire" or "PAC") was created in December 1993 and began distributing fuel in January 1994). From January to October 1994 PAC distributed three million gallons of diesel and seven hundred thousand gallons of gasoline, representing eight and a half per cent and five per cent, respectively, of total national consumption. *Id.*

316. BROCHURE EXPLICATIVE, *supra* note 314, at 1.

317. *Id.* at 1.

tion by permitting non-profit organizations to maintain their essential humanitarian activities through a minimal allocation of petroleum.³¹⁸

II. EFFECTIVENESS OF U.N. SANCTIONS

Due to the recent surge in the use of sanctions by the United Nations,³¹⁹ the international community began questioning the effectiveness of collective sanctions as a foreign policy tool.³²⁰ In addition, sanctions initiated since 1990 have tended to last longer, be more costly and complex, and be less successful than prior sanctions regimes.³²¹ The sanction debate centers in part around what constitutes an effective sanctions episode.³²² The sanctions the United Nations imposed on Haiti aptly illustrate how sanctions can be ineffective.³²³

A. General Effectiveness of U.N. Sanctions

Sanctions are generally considered an effective foreign policy tool because, without resorting to the use of force, sanctions condemn the acts of the target state, support diplomatic maneuvering with concrete deeds, and send a message to sender states

318. *Id.* PAC bought small amounts of fuel on the international market with the consent of the Sanctions Committee. *Id.* A sub-committee known as the *Comité de Gestion du Carburant* determined the agencies or institutions eligible to receive fuel and was comprised of representatives from the constitutional *de jure* government of Haiti, from U.N. agencies, from NGOs active in the country, and from countries contributing financially to the program. *Id.* at 2. The international community subsidized the initial shipment of fuel. *Id.* at 3. Participants in the program financed the following shipment by paying a fee which was as near as possible to the price of fuel at the pump. *Id.* at 4. The payments for the fuel were made in dollars or through a pre-arranged agreement, in Haitian Gourdes. *Id.* at 5.

319. See *supra* note 20 and accompanying text (discussing increase in number of times United Nations Security Council resorted to sanctions).

320. See, e.g., John Stremlau, *Carnegie Corporation of New York, Sharpening International Sanctions: Toward A Stronger Role for the United Nations* (Nov. 1996) <<http://www.carnegie.org>> (discussing use of sanctions by United Nations and suggesting ways to improve them); Ivan Eland, *Economic Sanctions as Tools of Foreign Policy*, in *ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING?*, *supra* note 25, at 29-42 (analyzing effectiveness of sanctions as foreign policy tools); Joyner, *supra* note 137, at 73-87 (criticizing effectiveness of U.N. sanctions).

321. Stremlau, *supra* note 320, at 4.

322. See *supra* note 113 and accompanying text (discussing various views on how to evaluate impact of sanctions).

323. See *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 4 (stating that sanctions imposed on Haiti did not help remove the *de facto* government and aggravated Haiti's socio-economic situation).

nationals that the sender government is willing to protect vital national interests.³²⁴ Sanctions are also considered effective because the sender state can often implement them at low cost to itself.³²⁵ U.N. sanctions imposed on Haiti pursuant to Security Council resolution 841³²⁶ were initially considered to be effective because they brought the Haitian military government to the negotiating table and led to the signing of the Agreement.³²⁷

U.N. sanctions nonetheless have been criticized as policy tools for a number of reasons.³²⁸ Sanctions are often the wrong tools to use because their goals are too elusive, the sanctions are not coercive enough, and other countries are not cooperating sufficiently or may even openly defy the sanctions.³²⁹ Sanctions may furthermore create their own antidotes by unifying the country in support of the government³³⁰ or in search of commercial alternatives.³³¹ New economic elites may emerge with the creation of alternative black markets and the realignment of various economic sectors.³³² Sanctions may alienate allies abroad and business interests at home in the sender state(s).³³³ In addition to being reactive instruments, sanctions take time to have

324. ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 11.

325. See THE UNITED NATIONS AND MULTILATERAL SANCTIONS, *supra* note 104, at 7 (stating that attractiveness of sanctions is due to their low cost).

326. S.C. Res. 841, *supra* note 2.

327. See *supra* note 16 (outlining negotiations leading up to Governors Island Agreement).

328. See *supra* note 320 (setting forth several approaches to studying effectiveness of sanctions).

329. ECONOMICS SANCTIONS RECONSIDERED, *supra* note 103, at 12.

330. Johnathan Galtung, *supra* note 109, at 33. The conspicuous sacrifice by leaders might have a propaganda effect and may result in social and political integration rather than disintegration of the target state. *Id.* at 35.

331. ECONOMICS SANCTIONS RECONSIDERED, *supra* note 103, at 10.

332. Galtung, *supra* note 109, at 33.

333. ECONOMICS SANCTIONS RECONSIDERED, *supra* note 103, at 11. With respect to Haiti, European nations did not comply with the sanctions recommended by the U.N. General Assembly. STREMLAU, *supra* note 320. The Dominican Republic was a constant source of supplies for Haiti. See, e.g., Howard W. French, *Embargo Creates 'Oil Boom' Near Haitian Border*, N.Y. TIMES, March 13, 1994, at 5; see also M. Jennifer MacKay, *Economic Sanctions: Are They Actually Enforcing International Law in Serbia-Montenegro?*, 3 TUL. J. INT'L & COMP. L. 203, 232-233 (1995) (arguing that sanctions imposed by U.N. Security Council Resolution 757 against Serbia-Montenegro to end violence in former Yugoslavia, hurt economically-disadvantaged neighboring Eastern bloc sender countries who relied on trade with Serbia-Montenegro); see also Gary Spencer, *U.N. Official Discusses Sanctions' Viability*, N.Y. L.J., Jan. 24, 1991, at 1 (quoting U.N. Under Secretary-General for Legal Affairs as saying that protection of neighboring states from fallout of sanctions must be improved for more effective use of sanctions).

full effect.³³⁴ A recent argument to emerge since U.N. imposed sanctions on Iraq in 1990 concerns the effect of sanctions on the target state's population.³³⁵ Critics of U.N. sanctions tend to point to the collateral human cost of sanctions as a reason to limit their use.³³⁶ Wealthy countries do not want to establish a fund or alternative mechanisms to compensate the target state's as well as non-target states' populations hurt by the sanctions.³³⁷

334. THE UNITED NATIONS AND MULTILATERAL SANCTIONS, *supra* note 104, at 8-9.

335. Stremlau, *supra* note 320. See Madeleine Albright, *supra* note 9, at 1602 (describing insufficiency of sanctions as means to alter behaviour of Haitian military and hardship sanctions imposed on vast majority of Haiti's population); Jeong Hwa Pires, *North Korean Time Bomb: Can Sanctions Defuse it? A Review of International Economic Sanctions as an Option*, 24 GA. J. INT'L & COMP. L. 307, 337-338 (1994) (stating that Haiti clearly illustrated problem of human costs of sanctions and discussing cost of reconstruction following lifting of sanctions); Joy K. Fausey, *Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?*, 10 CONN. J. INT'L L. 193, 204 (1994) (arguing that U.N. sanctions destroy the right to adequate standard of living). See F.B.I.S., *Events in and Concerning Haiti*, Jan. 31, 1995 (reporting that international community found itself pledging \$900 million to revive Haitian economy in 1995 following lifting of sanctions). See generally SUPPLEMENT TO AN AGENDA FOR PEACE, *supra* note 11, at ¶ 70-76 (discussing effect of sanctions and recommending creation of new mechanism to assess impact of sanction on target before sanctions are applied, to monitor application of sanctions, to measure effect of sanctions, to ensure delivery of humanitarian assistance, and to assist Member States experiencing collateral damage and applying for exemption pursuant to Article 50). Boutros Boutros-Ghali wrote:

70. Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behavior is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects. They can complicate the work of humanitarian agencies by denying them certain categories of supplies and by obliging them to go through arduous procedures to obtain the necessary exemptions. They can conflict with the development objectives of the Organization and do long-term damage to the productive capacity of the target country. They can have a severe effect on other countries that are neighbors or major economic partners of the target country. They can also defeat their own purpose by provoking a patriotic response against the international community, symbolized by the United Nations, and by rallying the population behind the leaders whose behavior the sanctions are intended to modify.

Id. at ¶ 70; see generally THE REPORT, *supra* note 239 (assessing impact of sanctions on Haitian population).

336. See Stremlau, *supra* note 320 (observing that damages sanctions inflict on innocent civilians in target state have become pivotal to Member States' argument to limit intrusiveness and scope of sanctions).

337. *Id.* States have refused to set up the fund because of the financial burden it entails. *Id.* Moreover, non-target states' request to set up a fund to assist them should sanctions adversely impact them, is a way for them to challenge the Security Council's lack of accountability. *Id.* As the United Nations stands now, Members of the Security

From a legal perspective, the extraterritorial effects of sanctions may make them legally suspect.³³⁸ A state, however, has the legal authority to create a law that would affect extraterritorial transactions.³³⁹ Another reason to suspect the legality of sanctions is the poor track record of sanctions in the foreign private litigation context.³⁴⁰

From a procedural standpoint, collective sanctions authorized by the United Nations encounter a number of criticisms.³⁴¹ Most countries do not have the legal or logistical infrastructure to implement the sanctions.³⁴² Despite the United Nations' 185 members, sanctions remain in the control of the five superpowers sitting on the Security Council,³⁴³ because only the Security Council can authorize the use of coercive measures.³⁴⁴ Less influential Member States have little or no say in the application of sanctions by the United Nations.³⁴⁵ Moreover, China and Russia, for instance, generally oppose intervention by the United Nations in the internal affairs of a state for fear of an erosion of their sovereign protection and, in the case of China, to avoid criticism of its human rights practices.³⁴⁶

Council may veto sanctions targeted at them and impose sanctions against others. *Id.* The issue also brings to the fore the divisions between rich and poor countries at a time of increasing socio-economic disparities between the two groups. *Id.*

338. MALLOY, *supra* note 108, at 610-611.

339. *Id.*

340. *Id.*

341. Stremlau, *supra* note 320.

342. *Id.* The problem was aptly illustrated in the small number of responses the United Nations got from Member States regarding the measures they were undertaking to impose the sanctions on Haiti. See *supra*, note 312 and accompanying text (discussing submission of reports by Member States to Security Council regarding implementation of sanctions).

343. See *supra* note 53 and accompanying text (setting forth structure of Security Council).

344. Stremlau, *supra* note 320.

345. *Id.*

346. *Id.* Following the unanimous adoption of Resolution 841, a debate ensued among the members of the Security Council, shedding light on the Member States' positions on sanctions. *Provisional Verbatim Record*, *supra* note 266, at 9. The U.N. representatives of the Bahamas, Canada, and Haiti requested and were granted permission to sit in and contribute to the meeting. *Id.* Canada began the meeting by reiterating that it had all along unreservedly supported the OAS sanctions and would continue to support the sanctions proposed by the Security Council. *Id.* at 6-7. The President of the Security Council observed that the adoption of the resolution "is warranted by the unique and exceptional situation in Haiti and should not be regarded as constituting a precedent," a view echoed by both the Pakistani and Chinese delegates to the Security Council who expressed that their vote for the resolution was not indicative of an official

position for future resolutions of a similar sort. *Id.* at 21. China's delegate restated China's usual policy toward sanctions and added that only because of Haiti's exceptional circumstances had China decided to vote in favor of the resolution. *Id.* He said that

[t]he Chinese delegation, as its consistent position, does not favor the Security Council's handling of matters which are essentially internal affairs of a Member State, nor does it approve of resorting lightly to such mandatory measures as sanctions by the Council. We wish to point out that the favorable vote cast by the Chinese delegation cast just now does not mean any change in that position.

Id. Mr. M  rim  e of France injected a word of caution when he said that "it will be necessary for the Council to tighten these measures if once again, no tangible result emerges from the talks." *Id.* at 9. Brazil voted in favor of the sanctions in the hope that the United Nations would not have to apply them. *Id.* at 18. Madeleine Albright, the United States' representative to the United Nations said that sanctions were not a solution to the Haitian crisis, that "the international community cannot solve the Haitian crisis. Only the Haitians themselves can do that . . . Haitians in leadership positions now must do their part. We look to them to demonstrate the patriotism and statesmanship their country requires." *Id.* at 19. The members of the Security Council also met following the adoption of Resolution 917. *Minutes to the Security Council's 3376th Meeting Following the Adoption of Resolution 917, supra* note 288. The members' tone was cautious and negative, given their prior experience. *Id.* For the first time, they voiced true criticism of the use of sanctions, particularly of the sanctions' impact on Haitians. *Id.* The Representatives of Venezuela, Brazil, France, the United States, and China made some remarks on sanctions. *Id.* Enrique Tejera Paris of Venezuela, who was just sitting in at this point and had no voting rights, said that "those responsible for the dictatorship should understand that the sanctions were not reprisals." *Id.* Madeleine Albright of the United States acknowledged that sanctions were a blunt instrument. *Id.* She remarked that

The United States was acutely conscious of the suffering of the Haitian people, and of the potential of the sanctions to aggravate that suffering . . . Sanctions were one of the most potent weapons the international community possessed. That step imposed upon the country was a significant moral obligation — to persevere and enforce the sanctions fully so that they achieved their objective in the shortest possible time.

Id. Jean-Bertrand M  rim  e of France announced that the Council would regularly review the sanctions and their humanitarian impact. *Id.* Ronaldo Sandenberg of Brazil echoed M  rim  e warning that

the option pursued . . . raised, however, a number of issues of concern on the possible deterioration of the humanitarian situation in Haiti, as a comprehensive embargo might create additional suffering to the Haitian people. It was important, thus, to keep under constant review any adverse consequences which the extremely serious measures taken by the Council might entail. A sanctions regime would never be an end in itself . . . It would be hard to conceive the imposition of measures that affected an entire population being adopted in a political vacuum.

Id. Chen Jian of China was the only representative to admit that the suffering in Haiti could be partly attributable to the previous sanctions. *Id.* He also reiterated his earlier position, noting that "sanctions were not a panacea that could be applied whenever and wherever it suited others for want of better solutions." *Id.*

B. *Effect of U.N. Sanctions in Haiti*

The sanctions imposed on Haiti had widespread repercussions, particularly on the poor, and aptly illustrate sanctions' ineffectiveness.³⁴⁷ Although Security Council Resolution 841 did provide for limited quantities of oil to be imported for humanitarian purposes,³⁴⁸ and Resolution 917 exempted food and medicine,³⁴⁹ the Resolutions created a *de facto* embargo on medical and preventive health care and food for rural Haiti.³⁵⁰ It is difficult to assess the specific impact of embargoes on a population because of other factors affecting the situation, such as a previously unstable economy and government, a weak social fabric, migration, and environmental catastrophes.³⁵¹ An embargo, however, can contribute to and exacerbate pre-existing problems.³⁵²

1. Humanitarian Assistance

Sanctions impeded international assistance to Haiti.³⁵³ As the sanctions continued, humanitarian assistance became a necessity, replacing development assistance.³⁵⁴ The primary emphasis for humanitarian assistance eventually became food and feeding programs.³⁵⁵

347. See THE REPORT, *supra* note 239, at 20 (observing that sanctions exacerbated Haiti's human crisis and that where sanctions were "broad and extended, the human impact was correspondingly greater than where the instruments employed were time-limited or sharp and targeted at the political elite").

348. S.C. Res. 841, *supra* note 2, ¶ 7.

349. S.C. Res. 917, *supra* note 3, ¶ 7 (a), (b), (c), (d).

350. See THE REPORT, *supra* note 239, at 23 (stating that customary exemption of food and medicine in sanctions does not ensure the free and unconditional movement of goods).

351. See *id.* at 20 (arguing that sanctions in Haiti "contribut[ed] to a 'syndrome,' a multidimensional political crisis. As such, it becomes very difficult to disaggregate any single element of the syndrome as being responsible for any particular humanitarian insult.").

352. *Id.*

353. See *id.* at 23 (discussing restrictions put on humanitarian assistance by OAS, United Nations, and United States).

354. *Id.* at 21.

355. See *id.* at 21 (observing that food and agriculture represented approximately two thirds of humanitarian aid flows). By 1994, the Specialized Agencies and other international and Haitian non-governmental organizations were distributing food to over one million Haitians daily. United Nations Press Release, *UN Emergency Coordinator Appeals to Haitian De Facto Authorities to Release Urgently Needed Diesel and Petrol Shipment*, HI/43, IHA 535, 25 Aug. 1994. [hereinafter *The Press Release*]. By August 1994, CARE, an American non-governmental organization, was feeding six hundred thousand Hai-

The most severe restrictions imposed on the humanitarian assistance program in Haiti during the sanctions were bureaucratic and political.³⁵⁶ Technically the Resolutions exempted humanitarian assistance from the restrictions.³⁵⁷ Resolution 917, however, gave exporting countries of foodstuffs and medical supplies free reign to define what constituted foodstuffs and medical supplies.³⁵⁸ The United States, for instance, came up with a particularly narrow definition for foodstuffs.³⁵⁹ Some American companies refused to deliver supplies to avoid potential legal hassles in the United States.³⁶⁰

Because two of the purposes of the sanctions consisted of isolating the *de facto* government diplomatically and not recognizing it,³⁶¹ the Specialized Agencies, bilateral aid agencies, and

tians daily. Larry Rohter, *Haiti's Hunger is Abundant while Food is Scant at Best*, N.Y. TIMES, Aug. 6, 1994, at A16.

356. See THE REPORT, *supra* note 239, at 23 (discussing United Nations', OAS', and United States' restriction of humanitarian assistance to non-governmental organization ("NGO") channels). By restricting the humanitarian assistance to NGO channels, the United Nations, the OAS, and the United States sought to avoid the *de facto* government who perceived the receipt and control of the aid as international political recognition and legitimization. *Id.* at 22-3; see also Tim Johnson, *Relief Worker Battles Two Foes: Haitian Poverty, U.S. Bureaucracy*, MIAMI HERALD, Aug. 29, 1994, at 1A (describing U.S. NGO's experience dealing with sanctions guidelines set out by U.S. Government).

357. See *supra* notes 348 and 349 and accompanying text (outlining Resolutions' exemptions of humanitarian assistance).

358. See S.C. Res. 917, *supra* note 3, ¶ 7(a) (illustrating lack of specific definition of medical supplies and foodstuffs).

359. See Exec. Order No. 12,917, 59 Fed. Reg. 26,925 (1994) (announcing that United States would allow the export of

medicines and medical supplies as authorized by the Secretary of the Treasury, and flee, beans, sugar, wheat flour, cooking oil, corn flour, milk and edible tallow, provided that neither the *de facto* regime in Haiti nor any person designated by the Secretary of the Treasury as a blocked individual or entity of Haiti is a direct or indirect party to the transaction).

360. United Nations Development Programme, *Rapport sur la Situation de l'Aide Humanitaire en Haiti*, 2 (May 27, 1994). Upjohn, the manufacturer of Depo-Provera, the second most popular contraceptive in Haiti and supplied through UNFPA and eventually NGOs, refused to deliver supplies in 1994, despite assurances by the WHO that they fell into the category of medical supplies. *Id.*

361. Letter from Larry Crandall, Director of the United States Agency for International Development ("USAID") to the Heads of International Organizations in Haiti (June 17, 1994) (on file with the *Fordham International Law Journal*). Mr. Crandall wrote:

We wish to emphasize the importance of maintaining the already strong humanitarian program and the need to strengthen it in the face of extremely difficult administrative and logistical obstacles. . . .

With respect to implementation, we caution you to avoid unnecessary actions that might infer accepted authority or legitimacy to the illegal govern-

NGOs could not work with the *de facto* government.³⁶² This policy increased the scope of the Specialized Agencies' activities by eliminating whatever support the government had previously been supplying.³⁶³ The diplomatic isolation of the regime also led the *de facto* authorities to exert whatever power they could over the international community, not only to impede the sanctions program but also to gain some sort of recognition or acknowledgement of the *de facto* government.³⁶⁴ One of the regime's tactics was to withhold the supplies, particularly oil supplies, until governments or agencies applied to them for tax exemptions, forcing the agencies to recognize the *de facto* government.³⁶⁵ Although the United Nations Emergency Relief Coordinator and Under-Secretary General for Humanitarian Affairs insisted on the neutrality of U.N. humanitarian assist-

ment. You are especially cautioned to do as little as possible in meeting Haitian *de facto* government administrative and other requests, but as much as necessary to keep programs up and going while maintaining program accountability. We fully recognize this is a daunting task.

Id.

362. *Id.* The *de facto* Minister of Health, Jean Boisrond, for instance, gave an interview on Haitian national radio and complained that the Ministry of Health did not receive any aid from the international community, even from WHO which is supposed to be a humanitarian agency. *Interview with the "Minister of Health, Jean Boisrond* (Radio Métropole, Port-au-Prince, Haiti, Aug. 9, 1994). Because the international community did not want to recognize the *de facto* government, the community suspended channeling aid through the various Ministries. *Id.* An indirect repercussion, however, was that public hospitals, for example, were not eligible to receive humanitarian fuel. *Id.* Furthermore, the policy guidelines failed to distinguish between *de facto* governmental political levels, such as ministers and other policy-makers, and operating public structures such as doctors at public hospitals. THE REPORT, *supra* note 239, at 23.

363. See THE REPORT, *supra* note 239, at 23 (discussing limited availability of vaccine supplies during embargo because U.N. Agencies could not use Haitian Ministry of Health as procurement, storage and distribution center). Another example would be the impact of the isolation and non-recognition policies on the FAO. *Rapport sur la Situation de l'Aide Humanitaire en Haïti*, *supra* note 360, at 1. Because the FAO relied on the Ministry of Agriculture for technical support but could no longer do so because of the Ministry's *de facto* status, the implementation costs of certain projects increased for the FAO. *Id.* The FAO therefore had to stock and distribute agricultural inputs, which originally had been the responsibility of the Ministry of Agriculture. *Id.*

364. See THE REPORT, *supra* note 239, at 22 (observing that *de facto* government perceived receipt and control of multilateral and bilateral aid as indication of international recognition and legitimization).

365. See *The Press Release*, *supra* note 355 (referring to *de facto* government's withholding of ten thousand barrels of diesel and petrol meant for humanitarian assistance); see also Kathie Klarreich, *US Forced to Break Fuel Embargo in Haiti*, CHRISTIAN SCI. MONITOR, Aug. 25, 1994, at 4 (quoting diplomat in Haiti as saying that "the only reason they're [*de facto* military government] playing this game is to force us to deal with them.").

ance,³⁶⁶ the *de facto* authorities continued to use humanitarian aid as a means to gain political leverage.³⁶⁷

The oil embargo, although technically allowing for shipments of fuel for humanitarian purposes,³⁶⁸ impeded the delivery of humanitarian assistance.³⁶⁹ Three hundred NGOs, bilateral and multilateral humanitarian assistance programs relied on the distribution of humanitarian fuel.³⁷⁰ The lack of fuel not only limited transportation of supplies to rural and hard to access areas, and prevented patients from reaching rural health clinics, but also impeded the use of generators to supply electricity for the health clinics.³⁷¹ Eventually, the sanctions under Res-

366. *The Press Release*, *supra* note 355. The insistence on the neutrality of humanitarian assistance was in keeping with Boutros-Ghali's point that humanitarian aid should be provided "in accordance with the principles of humanity, neutrality and impartiality." *AN AGENDA FOR PEACE*, *supra* note 10, at 13.

367. *See supra* note 365 and accompanying text (outlining use of humanitarian assistance by *de facto* government as political tool). The Harvard Report also argued that, in 1993, the political arm of the United Nations tended to view humanitarian assistance as political instrumentalities and the nascent humanitarian arm was not able yet to formulate a strategy for neutral humanitarianism in a situation such as Haiti's. *THE REPORT*, *supra* note 239, at 22.

368. *See supra* notes 348 and 349 and accompanying text (discussing exemptions allowed under Resolutions 841 and 917); *but see* Judith Vandewater, *Embargo is Killing Haitians, says Area Doctor on Mercy Mission*, *ST. LOUIS POST-DISPATCH*, Feb. 15, 1994, at 5c (reporting that small clinics and missions that provide much of health care to Haiti's more than six million people were reduced to sending trucks to border of Dominican Republic to scrounge for high-priced fuel on black market). Only hospitals affiliated with international relief organizations had a chance of getting any fuel sanctioned for humanitarian relief. *Id.*

369. William Coch, Henry Macler, Ken Van Dine, *Letter to the Editor: In Haiti, Oil Embargo Increases Suffering*, *N.Y. TIMES*, Feb. 18, 1994, at A26. A twelve member American medical team who had just returned from Haiti, wrote:

We observed a drastic reduction in medical and preventative health services provided to rural Haitians. Compared with January 1993, attendance at rural illness clinics is down 70 percent, surgical cases in regional hospitals are down 75 percent, and the number of immunizations and family planning services dispensed has similarly declined. Public transportation . . . has declined nearly 85 percent, and the cost has increased 500 percent, beyond the reach of most Haitians. The oil embargo is a *de facto* embargo on medical and preventative health care for rural Haiti The oil embargo is a *de facto* food embargo for rural Haiti.

Id. *See The Press Release*, *supra* note 355 (stating that PAC humanitarian fuel programme was backbone of humanitarian operations in Haiti because the program allowed agencies and NGOs to distribute necessary supplies).

370. *The Press Release*, *supra* note 355.

371. *See THE REPORT*, *supra* note 239, at 12-13 (discussing impact of oil embargo on provision of medical and preventive health care in rural areas).

olution 917 also came to include spare parts for trucks,³⁷² further hampering the delivery of supplies.³⁷³ Due to the special measures needed to transport supplies from Miami and the Dominican Republic, the cost of those supplies necessarily increased.³⁷⁴

The financial embargo also impeded the humanitarian assistance program.³⁷⁵ The U.S. Department of the Treasury did not allow NGOs and agencies with bank accounts in the United States to send funds to Haiti via check.³⁷⁶ The only way to get money into the country was by wire transfer.³⁷⁷

Security became a growing concern, particularly during the summer of 1994.³⁷⁸ Because of the lack of security outside the major cities, few of the Specialized Agencies undertook field trips to monitor the situation.³⁷⁹ Road conditions deteriorated, preventing NGOs from functioning in the provinces, particularly the extremely poor Northwest province.³⁸⁰

Shortly after the adoption of Resolution 841, the nascent Department of Humanitarian Affairs had not yet formulated a

372. See S.C. Res. 917, *supra* note 3, ¶ 7 (stating that Member States should prevent the sale of any commodities or products to Haiti or Haitian national or any person or body carrying on business in Haiti).

373. See Douglas Farah, *Haiti's Tiny Victims: As Embargo Tightens, Hospital in Slum is Crowded with Malnourished Babies*, WASH. POST, June 30, 1994, at A1, A26 (quoting Haitian businesswoman discussing lack of medical supplies due to absence of transportation).

374. *Rapport sur la Situation de l'Aide Humanitaire*, *supra* note 360, at 3. By the end of May the United Nations Development Program estimated that transportation costs alone would increase from 15% to 30% of the value of the imports. *Id.* The Report on the Status of Humanitarian Assistance in Haiti warned that the DHA needed to intervene to provide the necessary additional funds. *Id.* Of the estimated U.S.\$62,727,000 needed for the implementation of the assistance program, the Spécialized Agencies had only received a total of U.S.\$9,579,565 as of May 20, 1994. *Id.*

375. See Letter from R. Richard Newcomb, Director, Office of Foreign Assets Control, U.S. Department of the Treasury (July 27, 1994) (on file with the *Fordham International Law Journal*) (outlining procedures adopted by the U.S. Treasury's Office of Foreign Assets Control ("OFAC") in light of financial embargo). A Haitian NGO with a bank account in the United States was given an OFAC registration number to allow it to draw funds from its U.S. account. *Id.* Without the registration number U.S. banks would reject the NGO's request, due to the financial sanctions imposed on Haiti. *Id.*

376. *Id.* The checks were "subject to misuse in the secondary marketplace in Haiti." *Id.*

377. *Id.*

378. *Rapport sur La Situation de l'Aide Humanitaire*, *supra* note 360, at 2.

379. *Id.*

380. *Neuf ONG Arrêtent de Fonctionner*, LE NOUVELLISTE, March 29, 1994, at 12.

policy to coordinate the Specialized Agencies.³⁸¹ The Specialized Agencies had a hard time getting financing for their humanitarian assistance programs.³⁸² Moreover, bilateral donors controlled the humanitarian contributions of their governments and impacted Specialized Agencies' humanitarian work in Haiti by conditioning the governments' donations to the Specialized Agencies.³⁸³

Finally, the large relief agencies and specialized agencies had less trouble getting exemptions than did small relief groups who do most of their work outside of Port-au-Prince.³⁸⁴ A small U.S. based relief group for instance, needed the consent of the State Department and of OFAC to charter a plane to bring in supplies.³⁸⁵ The Treasury Department application for exemptions was ten pages long and took up to six weeks to process.³⁸⁶

2. Health Effects

The general health of the Haitian population suffered as a result of the U.N. sanctions.³⁸⁷ Sanctions particularly impacted women and children, traditionally vulnerable groups.³⁸⁸ Although medical supplies and foodstuffs were exempt from the embargo, the lack of fuel in particular contributed to the decline in health, by curtailing the distribution of food and vaccination

381. THE REPORT, *supra* note 239, at 22.

382. See *Rapport sur La Situation de l'Aide Humanitaire*, *supra* note 360, at 1, 3 (requesting that Department of Humanitarian Affairs help Specialized Agencies get funds).

383. THE REPORT, *supra* note 239, at 22.

384. See Johnson, *supra* note 356 (reporting on small relief agencies overcoming bureaucratic obstacles in United States to bring medical supplies to Haiti during embargo).

385. See *id.* (reporting that U.S. charter plane companies refused to fly supplies into Haiti without approval of U.S. State Department and OFAC).

386. *Id.*

387. See USAID, HAITI: MONITORING REPORT MARCH 1994, at 4-6 (reporting on high malnutrition, morbidity, and low birthweight levels among Haitian pre-school children between 1992 and 1994); see also Pan American Health Organization & World Health Organization, HAITI: HEALTH SITUATION ANALYSIS 1994 SUMMARY, 1 (1994) [hereinafter 1994 PAHO REPORT] (observing that Haiti's deteriorated health situation worsened considerably between 1991 and imposition of sanctions by OAS and United Nations). Between 1991 and 1994 access to health services declined considerably because of the embargoes. *Id.* at 4.

388. See 1994 PAHO REPORT, *supra* note 387, at 3 (observing that sanctions contributed to further deterioration of children's nutritional environment and that mothers had to intensify activities outside the home, compromising child care and feeding practices).

programs.³⁸⁹ Malnutrition and epidemics became predominant problems.³⁹⁰

The absence of certain seeds,³⁹¹ the increased price of fertilizers,³⁹² and higher transportation costs raised the price of food.³⁹³ The food programs³⁹⁴ also ruined a number of Haitian farmers by providing free food at times of high agricultural productivity.³⁹⁵ In its monthly monitoring reports, USAID reported, if not an increase in the food supply in most of Haiti,³⁹⁶ a normal production level in certain regions.³⁹⁷ While crops were available, these crops perished because there was no transportation to get them to the markets.³⁹⁸ Doctors noticed an increase in

389. See Coch, Macler, Van Dine, *supra* note 369 and accompanying text (writing that oil embargo created *de facto* embargo on medical and preventive health care and *de facto* food embargo); see *Testimony of David Rogers, Regional Manager Latin America CARE Before Senate Foreign Relations Comm.*, Mar. 8, 1994 (describing problems and logistics of CARE's feeding program). Mr. Rogers testified that:

since the start of the embargo last November, CARE has needed to expand its food assistance program In January 1992, CARE's food programs targeted 20,000 people. Now just two years later, CARE's plan calls for the distribution of daily supplemental food to 620,000; i.e., 300,000 in a regular program for nutritionally vulnerable and an additional 320,000 at risk because of the present emergency situation Since the fuel embargo began in November, CARE staff have worked tirelessly to overcome the logistical and administrative problems involved in transporting vast quantities of food in the absence of readily available fuel, spare parts, a functioning infrastructure, and security. Despite their best efforts, food piled up on the docks in Port-Au-Prince while the CARE warehouses in the Northwest came dangerously close to empty.

Id.

390. See 1994 PAHO REPORT, *supra* note 387, at 2 (observing that health situation in Haiti between 1991 and 1994 was characterized by rapid increase in numerous epidemics as result of low immunization coverage, lack of other preventive care, and by deterioration of nutritional levels and general standards of living).

391. HAITI: MONITORING REPORT OCTOBER 1994, *supra* note 72, at 7 (1994).

392. *Id.*

393. See USAID, HAITI: MONITORING REPORT JANUARY 1994, at 6 (1994) (reporting that between December 1992 and December 1993 price of food increased seventy percent in Port-au-Prince markets, fifty-two percent in Northern markets, and fifty-six percent in Southern markets).

394. See *supra* notes 355 and 389 and accompanying text (discussing NGO food programs and logistics).

395. *La Paysannerie Haïtienne entre la Ruine et l'Exode*, LE NOUVELLISTE, Aug. 18, 1994, at 1.

396. See HAITI: MONITORING REPORT JANUARY 1994, *supra* note 393, at 7 (observing that stocks of locally produced staples continued to increase in early 1994).

397. See HAITI: MONITORING REPORT OCTOBER 1994, *supra* note 72, at 7 (reporting that growth of food crops in southern Haiti was normal).

398. HAITI: MONITORING REPORT JANUARY 1994, *supra* note 393, at 7.

the number of malnourishment cases, particularly of infants.³⁹⁹

The lack of refrigeration for vaccination serums and the high cost of and absence of transportation to the immunization centers interrupted the immunization programs.⁴⁰⁰ A measles epidemic swept through Haiti from July 1991 to the end of 1993, and doctors directly attributed the epidemic to low immunization coverage.⁴⁰¹ The lack of potable water that trucks usually transported also endangered the population's health.⁴⁰²

The political and diplomatic isolation of the *de facto* regime called for by the sanctions marginalized the Ministry of Health, exacerbating the effect of the embargoes.⁴⁰³ Because no Haitian government prior to the U.N. sanctions had invested in a social infrastructure,⁴⁰⁴ bilateral and multilateral agencies, churches, and NGOs provided the bulk of Haiti's health care both before and during the sanctions.⁴⁰⁵ The decentralized nature of Haiti's health system may have mitigated the impact of the sanctions and prevented the system's total collapse.⁴⁰⁶

399. USAID, HAITI: MONITORING REPORT DECEMBER 1994/JANUARY 1995, at 11. In the December 1994/January 1995 report, USAID recorded the highest level of severely malnourished children in nearly four years of reporting. *Id.*

400. See Mathilde Flambert, *Le Cadre Socio-Economique*, in *Participation de la République d'Haiti à la Consultation Régionale sur les Enfants Affectés par le Conflit Armé et les Embargos Economiques, IMPACT DE L'EMBARGO ECONOMIQUE SUR LES ENFANTS D'HAÏTI*, 3 (1996) (on file with the *Fordham International Law Journal*) (discussing lack of potable water and of refrigeration of vaccinations serums due to absence of fuel).

401. 1994 PAHO REPORT, *supra* note 387, at 2.

402. Flambert, *supra* note 400, at 3. See 1994 PAHO REPORT, *supra* note 387, at 6 (reporting that by 1994, 37% of Haitians living in Port-au-Prince and 23% of Haitians living in rural areas had access to potable water).

403. Inter-American Development Bank, HAITI: EMERGENCY ECONOMIC RECOVERY PROGRAM, REPORT OF THE JOINT ASSESSMENT MISSION, 58 (1994) [hereinafter EERP REPORT]. Although 50% to 60% of health services in Haiti are provided by NGOS, the marginalization seriously affected regions, such as the Grande Anse, the South and the South-East *Départements*, with high percentages of public health institutions in relation to NGO and mixed health services. THE REPORT, *supra* note 239, at 12. Public health facilities represented 55% of Grande Anse's total health facilities, 53% of the South's total health facilities and 67% of the South-East's total facilities. *Id.* The withdrawal of international assistance to the public health sector worsened already weak public health facilities. *Id.* Some public health facilities eventually closed down for lack of staff and medications. *Id.*

404. See UNICEF, *Analyse de la Situation des Femmes et des Enfants en Haiti (Période 1980-1993)*, 80-88 (1994) (discussing ultra-centralized Duvalier regime which virtually ignored basic needs of rural areas).

405. See THE REPORT, *supra* note 239, at 12 (reporting that during embargo amount of aid channeled through NGOs increased).

406. *Id.* at 13.

3. Environmental Effects

Preliminary figures indicate that the OAS and U.N. sanctions may have had a considerable impact on Haiti's environment.⁴⁰⁷ The consumption of wood for fuels increased eight percent between 1991 and 1992.⁴⁰⁸ Charcoal consumption increased eighteen and a half percent during the same time period.⁴⁰⁹ Wood for charcoal production substituted for the lack of fuel and gas for cooking and also represented an additional source of income.⁴¹⁰ The extensive logging contributed to the erosion of the soil,⁴¹¹ the clogging of irrigation systems,⁴¹² and eventually the disappearance of entire ecosystems.⁴¹³

4. Economic Effects

The embargo had a number of repercussions on the Haitian economy and various economic actors.⁴¹⁴ For the wealthy Haitian elite, the U.N. sanctions presented at most an inconvenience.⁴¹⁵ For black marketeers the sanctions represented a series of business opportunities.⁴¹⁶ Sanctions impacted most heavily the vast majority of Haitians living at subsistence levels.⁴¹⁷

A heavily hit sector of the economy was the assembly sec-

407. *Id.* at 15.

408. *Id.*

409. *Id.*

410. *Id.*

411. *Des Spécialistes du PNUD Ont Dénoncé la Dégradation Catastrophique de l'Environnement* (Radio Métropole, Port-au-Prince, Haïti, Oct. 21, 1994).

412. *Id.*

413. *Id.* Experts estimate that the environmental damage caused by the embargo will require US\$100 million to prevent any further degradation. *Id.*

414. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 5 (stating that sanctions impoverished Haitian middle class and created new class of wealthy black marketeers); see *supra* note 335 (discussing US\$900 million international community contributed to Haiti to jump start Haitian economy following lifting of sanctions in 1995).

415. See Kenneth Freed, *For Haiti's Wealthy, Crackdown Hasn't Ended Good Life*, L.A. TIMES, June 28, 1994, at A8 (reporting that despite comprehensive sanctions wealthy Haitians continue to live well in Haiti by circumventing sanctions and using black market).

416. See Kathie Klarreich, *Haiti Embargo Hits Middle Class; Elite Exploits Black Market*, CHRISTIAN SCI. MONITOR, Aug. 1, 1994, at 3 (describing how members of Haitian elite made millions of dollars on black market).

417. See Kathie Klarreich, *Haitians Focus on Daily Struggle*, CHRISTIAN SCI. MONITOR, Sept. 1, 1994, at 6 (observing how tripling price of transportation, rapid decline of Haitian Gourde, increase in price of food staples severely impacted lives of seven million Haitians).

tor.⁴¹⁸ Although under the OAS sanctions the United States allowed the 807 company⁴¹⁹ sector to continue operating, the U.N. sanctions prevented them from doing so.⁴²⁰ In addition, the United Nations and the European Union estimated that Haiti lost over US\$41 million in exports of agricultural products due to the embargo.⁴²¹

Overall unemployment in 1994 rose to eighty percent.⁴²² Between May and August 1994, fifty thousand inhabitants of Port-au-Prince lost their jobs.⁴²³ These repercussions of the embargo were especially far-reaching because business groups estimate that eight people rely on each salary.⁴²⁴ Unions became superfluous and collective bargaining non-existent, as employers set wages unilaterally.⁴²⁵ At most, the unions would keep track of their members and eventually provide limited assistance.⁴²⁶

On a macro-economic policy level, inflation skyrocketed by August of 1994, when the Central Bank expanded the money supply with no hard currency to back it up, devaluing the Haitian Gourde by forty percent.⁴²⁷ The devaluation led to an increased dollarization of the economy with the U.S. Dollar becoming the central currency.⁴²⁸ Consumer prices increased by

418. See EERP, *supra* note 403, at 22 (1994) (reporting that of 252 firms existing in 1990 in assembly sector, only 44 were operating by November 1994).

419. See *Testimony of Donna Hrinack*, *supra* note 238 (testifying as to why United States allowed 807 companies to continue their business in Haiti despite embargo).

420. Laurent Belsie, *Opportunity Knocks: Some US Firms Greet End to Haiti Embargo*, CHRISTIAN SCI. MONITOR, Sept. 27, 1994, at 3. At their peak, the assembly companies, which were primarily American, employed some 100,000 Haitians. *Id.* Other sources quote a more conservative estimate of 46,000. EERP REPORT, *supra* note 403, at 22. The loss of income from the assembly sector contributed to a fall in gross domestic product from US\$2.2 billion in 1991 to US\$1.9 billion in 1993. Canute James, *Haitians Try to Bring Tattered Economy Back from the Dead*, FIN. TIMES, Jan. 9, 1995, at 4.

421. *Haiti Tries to Avert \$\$\$ Crisis*, Associated Press, Aug. 29, 1994. Haiti lost US\$15 million in exports of coffee and cocoa, US\$14 million in essential oils, and US\$12 million in mangos. *Id.*

422. Douglas Farah, *Embargo has Haiti's Economy Near Collapse, but the Rulers Stand Firm*, WASH. POST, Aug. 26, 1994, at A20.

423. *Id.*

424. *Id.*

425. U.S. Department of State, *Country Reports on Human Rights Practices for 1994*, at 429-430 (1995).

426. *Id.*

427. *Embargo has Haiti's Economy Near Collapse*, *supra* note 422 at A20.

428. See *id.* (reporting that *de facto* government ordered all businesses to post prices in Haitian currency and not dollars to slow dollarization of Haitian economy and threatened to take legal action against business that did not follow orders).

almost fifty percent in 1993, which, combined with diminishing employment opportunities, made real wages fall by nearly a third.⁴²⁹ Remittances from abroad had provided approximately US\$240 million before the United States imposed limits of US\$50 per month.⁴³⁰

Due to the oil embargo, the status of multinational oil companies became precarious.⁴³¹ Other repercussions of the embargo included the emergence of a black market for fuel smuggled over the border shared with the Dominican Republic.⁴³² While the price of gasoline hovered around eight dollars a gallon in 1994, the price in Haitian gourdes doubled due to the

429. Inter-American Development Bank, *ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA 1994 SPECIAL REPORT: FISCAL DECENTRALIZATION*, 106 (1994).

430. *Embargo has Haiti's Economy Near Collapse*, *supra* note 422 at A20.

431. See Allyson LaBorde, *Oil Firms' Experience in Haiti Shows Squeeze of Conflicting Mandates*, *PLATT'S OILGRAM NEWS*, Nov. 30, 1993, at 2 (reporting that situation Esso, Texaco, and Shell found themselves in during oil embargo illustrated difficulties international companies faced in U.N. embargo). The three oil companies operating in Haiti before and during oil embargo were Exxon Corporation's subsidiary, Esso, Texaco, and Shell. *Id.* The imposition of the oil embargo by the Security Council presented less of an economic hassle to the oil companies than it did a political one. *See id.* (observing that quantities of petroleum and petroleum products those three oil companies imported into Haiti were infinitesimal relative to their total market). Following the reinstatement of the oil embargo by the Security Council on October 18, 1993, Haiti's National Association of Petroleum Products Distributors filed suit in a Haitian court against Shell, Texaco, and Esso after the companies decided to withhold supplies beginning October 21 pursuant to Resolutions 875 and 841. *Id.* On November 10, Shell Oil announced from its office in Houston that it refused to abide by the order from Haitian judicial authorities to resume gasoline sales, and justified its decision by claiming it was complying with the U.N. imposed embargo. *Courts Deny Shell Recourse* (Agence France Presse Broadcast, Paris, Nov. 14, 1993). On November 11th, 1993, the presiding judge, Judge Henock Voltaire, stating that the companies operating in Haiti must follow Haitian laws, ordered the three companies to resume distribution of reserves. *Id.* On November 13, Shell filed a recourse in the Haitian Court of Appeals, which was denied, to exclude itself from the mandatory distribution of its fuel. *Id.* On November 15 and 18, Haitian authorities forced the release of fuel and the oil companies' situation became ambiguous. LaBorde, *supra* note 431. Employees of the oil companies could be jailed in Haiti for violating Haitian laws by refusing to obey the court order. *Id.* The United Nations could not clarify whether the companies were in violation of the embargo. *Id.* A spokesperson for the U.N. Secretary General said the oil companies took the sanctions one step further than required by not releasing supplies on the island. *Id.* Resolution provisions only banned imports. *Id.* Legal scholars asserted that, in the immediate sense, companies operating in Haiti have no choice but to follow Haitian laws. *Id.* Only if the *de facto* government appropriated stocks would the home countries have a claim against Haiti in the realm of international law. *Id.*

432. Howard W. French, *Embargo Creates "Oil Boom" near Haitian Border*, *N.Y. TIMES*, Mar. 13, 1994, at 3; Katie Klarreich, *Haitians get Around U.N. Sanctions via Dominican Border*, *CHRISTIAN SCI. MONITOR*, Nov. 16, 1993, at 1.

devaluation of the Haitian Gourde.⁴³³ The diplomatic community found itself buying all of its fuel on the black market.⁴³⁴ Many Haitians turned to the cross-border gasoline trade since it was the only viable economic activity remaining.⁴³⁵ Coupled with inflated prices for seeds, the potential profits of the black markets were too big a lure for many peasants living near the border.⁴³⁶ They traded with herdsmen living near the border in the Dominican Republic who used to be involved in the illegal smuggling of sugar.⁴³⁷

The Haitian military benefited immensely from the cross-border smuggling and the black market for fuel.⁴³⁸ The military initially left the oil trade alone.⁴³⁹ When, however, the military learned of the potential profits in the black market in November of 1993, it then commandeered supplies and divided them among military officers to sell on the black market.⁴⁴⁰ The commanding officers were the primary beneficiaries of the profits from the sale of fuel on the black market, and had their own network based on the sale of contraband and extortion.⁴⁴¹

Because the Dominican Republic was the primary source of fuel sold on the Haitian black markets during the embargo, the international community tried to shut the Haitian-Dominican Republic border down or set up a better monitoring mecha-

433. *Embargo has Haiti's Economy Near Collapse*, *supra* note 422.

434. See Kathie Klarreich, *US Forced to Break Fuel Embargo in Haiti*, *CHRISTIAN SCI. MONITOR*, Aug. 25, 1994, at 7 (reporting that United States had been breaking oil embargo since 1993 by buying fuel on black market for embassy cars and generators).

435. French, *supra* note 432, at 3.

436. *Les Paysans se Convertissent en Vendeurs de 'gaz'*, *LE NOUVELLISTE*, Mar. 23-24, 1994, at 3.

437. *Id.*

438. See *Embargo Has Haiti's Economy Near Collapse*, *supra* note 422, at A20 (reporting that Haitian army was once economically dependent on Haitian elite for income but because of black market developed own financial backing and became independent of elite); see also *LES NATIONS UNIES ET HAÏTI*, *supra* note 4, at 5 (observing that black marketeers used financial gains to buy support).

439. *Haitians Get Around U.N. Sanctions via Dominican Border*, *supra* note 432.

440. See *Testimony of Michael R. Wiest, Deputy Executive Director of Catholic Relief Services Before the House Foreign Relations Comm.*, (February 9, 1994) (testifying that "high ranking military and police officers targeted by the international embargo, by all accounts, are reaping enormous economic benefits from the distortions to the economy that the sanctions are causing").

441. See *Embargo Has Haiti's Economy Near Collapse*, *supra* note 422, at A20 (reporting that military developed its own financial network based on extortion and contraband).

nism.⁴⁴² Getting the Dominican Republic to recognize and co-operate with the embargo was difficult.⁴⁴³ President Aristide had alienated the Dominican Republic in the early 1990s by criticizing the Dominican Republic's exploitation of Haitian labor and as result was widely disliked in the Dominican Republic.⁴⁴⁴ Moreover, the Haitian and Dominican armies have a history dating from the 19th century, of cooperating in smuggling ventures.⁴⁴⁵ Military budget cutbacks in the Dominican Republic made the lucrative border trade all the more appealing to the Dominican Republic's military.⁴⁴⁶

5. Social Impact

The U.N. sanctions both drew on and furthered Haiti's economic and social disparities.⁴⁴⁷ For the elite, the embargoes simply represented an inconvenience, even when directly targeted at them.⁴⁴⁸ Smuggling prevailed and the elite continued to get whatever it needed.⁴⁴⁹ Members of the elite also made money off of the black markets.⁴⁵⁰

442. See *Accord for Patrols on Border of Haiti*, INT'L HERALD TRIB., Aug. 3, 1994 (release compiled by INT'L HERALD TRIB. staff members) (reporting that United States and Dominican Republic had reached agreement for 88 member force to patrol Haitian-Dominican border to prevent smuggling of fuel from Dominican Republic); see also LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 4 (mentioning force set up to monitor Haitian-Dominican border).

443. See Robert S. Greenberger, *U.S. Policy on Haiti may be Affected by Recent Vote in Dominican Republic*, WALL ST. J., June 27, 1994, at A9 (reporting on Dominican Republic's lack of cooperation).

444. *Id.*

445. *Id.*

446. *Id.*

447. See LES NATIONS UNIES ET HAÏTI, *supra* note 4, at 5 (observing that sanctions impoverished Haitian middle class and brought about new class of black marketeers); see also notes 171 to 213 and accompanying text (detailing history of Haitian class rivalries).

448. See Freed, *supra* note 415, at A8 (describing impact of sanctions on targeted wealthy Haitians). One businessman close to the military said: "We are not idiots. We were told months in advance they were going to freeze our assets. If people didn't see the writing on the wall, well, they deserve to lose what they have." *Haiti Embargo Hits Middle Class; Elite Exploits Black Market*, *supra* note 416, at 3.

449. See *Haiti Embargo Hits Middle Class; Elite Exploits Black Market*, *supra* note 416, at 3 (reporting that goods flowed across border from Dominican Republic to supply elite and eventually to permit them to resell products on black market). A U.S. official said in August 1994: "The only people who can weather this [the inflation and the impact of the sanctions] are the true elite." *Embargo has Haiti's Economy Near Collapse, but the Rulers Stand Firm*, *supra* note 422, at A20.

450. *Haiti Embargo Hits Middle Class; Elite Exploits Black Market*, *supra* note 416, at 3

The effect of the sanctions on the middle class was much more severe than the effect on the elite.⁴⁵¹ Small entrepreneurs first found themselves having to close factories because the price of fuel on the black market got too expensive.⁴⁵² Engines and generators were irreparable due to a lack of spare parts.⁴⁵³ The income of members of the middle class who relied on their relatives' remittances decreased.⁴⁵⁴

Education in Haiti suffered due to the sanctions.⁴⁵⁵ In 1994, twenty-five percent of adult Haitian men and thirty-six percent of adult Haitian women had had no education whatsoever.⁴⁵⁶ Moreover, a study of the sanctions imposed on Cuba found that higher levels of education and social cohesion ensured that there was news of where to find limited goods, illustrating the need for education especially during an embargo.⁴⁵⁷ The lack of public transportation and gasoline for cars prevented children from going to school.⁴⁵⁸ As sanctions wore on, parents kept children at home because they were unable to pay the tuition.⁴⁵⁹ From January to September of 1994, Haiti's schools were open for a total of five months, due to the turmoil caused by the sanctions.⁴⁶⁰ By 1996, only fifty-seven percent of Haitian children were enrolled in school, illustrating the long term impact of the sanctions.⁴⁶¹

Sanctions severely impacted Haiti's peasantry.⁴⁶² The em-

(reporting that many members of Haitian elite made money on black market by hoarding products and then releasing them on black market at inflated prices).

451. *Haiti Embargo Hits Middle Class; Elite Exploits Black Market*, *supra* note 416, at 3.

452. *Id.*

453. *Id.*

454. See Howard W. French, *Even Wealthy Haitians Starting to Feel Pinched*, N.Y. TIMES, June 11, 1994, at 6 (reporting that due to financial embargo, estimated US\$200 million to US\$300 million in remittances sent to Haiti by Haitians living abroad, stopped, thereby eliminating substantial part of Haitians' income). Economists said remittances and funds from sale of cocaine had kept Haitian economy afloat since the 1991 coup. *Id.*

455. Flambert, *supra* note 400, at 3-4.

456. *Symposium National*, *supra* note 174, at 5.

457. Richard Garfield, Address at the Harvard University Conference on Human Rights and Sanctions (Sept. 22, 1994).

458. Flambert, *supra* note 400, at 3-4.

459. *Id.* at 4.

460. Garry Pierre-Pierre, *Turmoil in Haiti Dims Future of its Students*, N.Y. TIMES, July 6, 1994, at B7.

461. Flambert, *supra* note 400, at 4.

462. Howard French, *As Sanctions Bite, Haiti's Poor Feel the Pinch*, N.Y. TIMES, Nov. 15, 1993, at A7.

bargo prevented the export of Haitian farmed goods such as coffee, cacao, and mangoes, ruining farmers.⁴⁶³ Some sold their animals and eventually their plots of land and attempted to emigrate either to the cities, further overburdening an already weak urban infrastructure, or eventually to Florida.⁴⁶⁴ The food distribution programs came at times when there was enough local food being produced in certain regions.⁴⁶⁵ Not only did the programs raise the occurrence of welfare dependency but they also sent many farmers into ruin by drastically lowering the price of their products.⁴⁶⁶ During the time the sanctions were in effect, the United Nations invested a tremendous amount of money in lessening the pain it was inflicting on the populations of the targeted countries.⁴⁶⁷

III. ANALYSIS AND FINDINGS

Sanctions typically do not impose enough of a cost on the targeted group for them to matter.⁴⁶⁸ In an era of strong trade relations, economic sanctions can become more effective. There is a considerable gap between the use and definition of sanctions in treatises and the use of them in reality.⁴⁶⁹ This is mostly due to the implementation and enforcement of sanctions, which in Haiti's case fluctuated from a naval blockade by the United States⁴⁷⁰ to complete disregard of the embargo and the well-publicized continuation of trade over the Dominican Republic border.⁴⁷¹

463. *La Paysannerie Haitienne entre la Ruine et l'Exode*, *supra* note 355, 1. Coffee and cacao exports totalled US\$15 million per year prior to the embargo, oils totalled US\$14 million, and mangoes totalled US\$12 million. *Id.*

464. *Id.* Thirty-seven percent of peasants had debts of US\$70 or more and only had an annual income of US\$262 in 1992. *Id.* at 8.

465. *Id.*

466. *Id.*

467. Paul Lewis, *U.N. is Worried by Human Cost of Embargoes*, N.Y. TIMES, Dec. 19, 1994. U.N. members have disbursed more than US\$800 million a year to mitigate the pain of sanctions on Yugoslavia, Iraq, and Haiti. *Id.*

468. *See supra* notes 448 and 450 and accompanying text (discussing minor impact of sanctions on members of Haitian *de facto* government and elite relative to rest of Haitian population).

469. *See supra* note 108 (discussing lack of uniformity in definition of sanctions, indicating confusion involved in implementing sanctions).

470. *See supra* note 284 (setting forth details of naval blockade).

471. *See supra* note 432 and accompanying text (discussing supply by Dominican Republic of oil).

A. *Assessing the Effectiveness of Sanctions in Haiti*

Whereas the effectiveness of sanctions by definition will focus more on the sender country and its policies,⁴⁷² assessing the costs of sanctions, if done properly, should focus equally on the sender and target, eventually emphasizing the impact on the targeted country's population. Frameworks analyzing the effectiveness and cost of sanctions, however, generally tend to ignore the social dimension of sanctions.⁴⁷³ While effectiveness is a facet in the study of sanctions, there are other dimensions as well, such as the social one, which cannot be ignored, particularly in the case of collective sanctions imposed by an international or regional organization that also has duties to uphold rights and encourage social and economic development.⁴⁷⁴ The social costs, however, are hard to assess and, for that reason, have rarely been factored in as variables when calculating the effectiveness of a sanctions episode.

Particularly in donor-dependent and poor countries, the impact of sanctions, such as an embargo on aid, on the majority of the population can be drastic, as was the case of Haiti.⁴⁷⁵ In instances where the objective is to undermine the credibility of the targeted state's government, the sanctions can have repercussions on the majority of the population.⁴⁷⁶ Some of the best testimony regarding the impact of sanctions comes less from economists, trade experts, and policy makers, but rather from non-governmental organizations,⁴⁷⁷ field offices of international organizations,⁴⁷⁸ doctors and other field workers.⁴⁷⁹ Their testimony illustrates the real impact of the sanctions. Unfortunately the warnings issued during the hearings and in other forms of

472. See *supra* note 108 and accompanying text (defining sanctions).

473. See *supra* notes 113-14 and accompanying text (setting forth ways to evaluate effectiveness of sanctions).

474. See *supra* note 43 and accompanying text (discussing United Nations' mandate to encourage economic development).

475. See *supra* notes 335 and 447-67 and accompanying text (discussing impact of sanctions on target state's population).

476. *Id.*

477. See, e.g., *supra* note 389 (quoting testimony by CARE representative on impact of sanctions on Haitians).

478. See, e.g., *supra* notes 360, 387, and 404 (citing UNDP, USAID, PAHO, and UNICEF reports).

479. See *supra* note 369 and accompanying text (quoting testimony by American medical team working in Haiti during embargo).

testimony⁴⁸⁰ as to the consequences of prolonging sanctions had little effect on Security Council decisions to extend the embargo against Haiti.⁴⁸¹

Collective sanctions, whether imposed through a regional organization or the United Nations, are harder to enforce than unilateral sanctions for a number of reasons. The United Nations can only authorize sanctions,⁴⁸² but its Member States must implement them.⁴⁸³ The burden of enforcement and implementation can fall unequally on some countries, particularly those with strong trading or financial ties,⁴⁸⁴ those dependent on one commodity provided by the targeted state, or eventually countries neighboring the targeted state.⁴⁸⁵ Furthermore, the Sanctions Committees have met behind closed doors, and have not made the content of their meetings available to the media which could eventually help keep violators of sanctions in check.⁴⁸⁶

Another problem confronting the United Nations with regard to the enforcement and implementation of sanctions concerns multinational corporations. The problem stems from the confusion surrounding the status of multinationals and their subsidiaries as to which government regulates which segment of the multinational, particularly for companies operating within the targeted state.⁴⁸⁷ The United Nations cannot penalize multinationals for violating the sanctions if multinationals are working within the legal bounds established by the domestic law of the targeted countries.⁴⁸⁸ Accordingly, the United Nations must

480. See *supra* notes 369, and 387-89 and accompanying text (reporting on drastic impact of sanctions).

481. See *supra* note 346 (quoting debate following adoption of Resolution 917).

482. See *supra* notes 150-56 and accompanying text (discussing United Nations' ability to adopt resolutions calling for sanctions against Member State).

483. See *supra* notes 162-67 and accompanying text (setting forth obligation by Member States to implement and enforce sanctions called for by United Nations).

484. See *supra* notes 432-37 and accompanying text (analyzing Dominican Republic's trading relationship with Haiti).

485. See, e.g., *supra* notes 442-46 (debating role of Dominican Republic in enforcement of sanctions against Haiti).

486. See *supra* note 307 (discussing why Sanctions Committees meet behind closed doors).

487. See *supra* note 431 and accompanying text (setting forth problems faced by oil companies operating in Haiti during embargo).

488. See *id.* (discussing United Nations' inability to penalize multinationals for observing law because multinationals are non-state actors that fall outside purview of United Nations system).

be more aware of multinational corporations operating in the targeted country during a sanctions episode. Furthermore, the United Nations cannot just assume that implementation and enforcement measures undertaken by Member States will provide sufficient protection for those multinationals.

The United States had a particularly thorough framework in which to implement sanctions.⁴⁸⁹ Other countries did not,⁴⁹⁰ especially the Dominican Republic, which time and again violated the U.N. resolutions by supplying Haiti's black markets with fuel.⁴⁹¹ The issue brings to light the problems the United Nations faces when trying to enforce the Charter, because the United Nations' only remedies are political. Even if an issue were brought to the ICJ⁴⁹² and the parties did not comply with the Court's decision pursuant to Article 94(1),⁴⁹³ they still have recourse to the Security Council under Article 94(2).⁴⁹⁴

A number of problems confronted the OAS sanctions from their inception.⁴⁹⁵ The sanctions as drawn up by the OAS were meant as short-term policy instruments because their impact on the Haitian economy was known to be quite substantial. From October of 1991 to June of 1993, when the United Nations Security Council imposed sanctions, the OAS sanctions became progressively less effective as a means to reach a solution.⁴⁹⁶ Sanctions were not properly targeted and were hurting the wrong segments of the population.⁴⁹⁷ The decision of the Ministers' of Foreign Affairs of the OAS to shift the burden of finding

489. See *supra* note 166 (setting forth U.S. legal framework used to implement sanctions).

490. See *supra* note 137 (stating that there are differences among Member States' implementation mechanisms).

491. See *supra* notes 432-46 and accompanying text (reporting on black market trade over Dominican Republic border).

492. See *supra* notes 60-62 and accompanying text (outlining role of International Court of Justice).

493. See *supra* note 134 (citing Article 94 of U.N. Charter).

494. *Id.*

495. See *supra* notes 234-37 (discussing limitations of sanctions imposed by regional organization).

496. *Id.*; see, e.g., *supra* note 238 (quoting testimony by U.S. Assistant Secretary for Caribbean and Mexican Affairs as to reasons why United States decided to stop observing OAS sanctions and allow 807 companies to continue manufacturing in Haiti).

497. See *supra* notes 418-26 (analyzing impact embargo was having on Haitian workers).

a solution on to the Security Council⁴⁹⁸ best illustrates the failure of OAS and U.N. General Assembly resolutions. The General Assembly Resolutions mimicked those of the OAS⁴⁹⁹ and served only to expand the number of the states imposing sanctions on Haiti. The failure of both the OAS and the General Assembly resolutions to achieve a resolution to the Haitian crisis illustrate the inherent weaknesses of the two institutions. The OAS and the General Assembly are not able to play a central role in a sanctions episode because they are constrained by the voluntary nature of the measures they can impose and because, in the case of the OAS, of the regional limitations of its membership.

The selective measures⁵⁰⁰ had an enormous effect on the population but little effect on the military authorities. In fact, the military high-command had cornered the black market for fuel and was reaping the benefits.⁵⁰¹ Moreover, the Harlan County debacle clearly proved to the Haitian military that the United Nations and the United States were not fully committed to reinstating Aristide. The selective measures, when not backed up by the threat of military force, only served to entrench rather than extract the *de facto* government.

The oil and arms embargo generally was not a success because it was poorly thought out and targeted. The embargo impeded development and humanitarian assistance,⁵⁰² burdened the poor by destroying their livelihood,⁵⁰³ further jeopardized the environment,⁵⁰⁴ and unraveled Haiti's weak social fabric.⁵⁰⁵ In addition, the non-compliance by the Dominican Republic⁵⁰⁶

498. See *supra* note 232 (citing OAS resolution calling for more active role for Security Council).

499. See *supra* notes 244-46 and accompanying text (outlining General Assembly resolutions calling for sanctions against Haiti).

500. See *supra* notes 251-85 and accompanying text (discussing selective mandatory measures called for by Security Council).

501. See *supra* notes 432-41 (analyzing emergence of black market).

502. See *supra* notes 353-86 and accompanying text (describing impact of embargo on development and humanitarian assistance).

503. See *supra* notes 421-30 and 462-66 and accompanying text (outlining impact of sanctions on farmers and urban employment opportunities).

504. See *supra* notes 407-13 and accompanying text (describing impact of sanctions on Haiti's environment).

505. See *supra* notes 447-66 and accompanying text (setting forth impact of sanctions on Haitian society).

506. See *supra* notes 442-46 and accompanying text (describing Dominican Republic's non-compliance with the embargo).

which was supplying a large amount of Haiti's oil,⁵⁰⁷ contributed to the failure of this set of sanctions. The United Nations ultimately misunderstood how deeply rooted the elite's fear of Aristide's policies were, and underestimated the power of violence in Haitian society. The embargo simply compounded rather than alleviated Haiti's problems.

An anticipated, if unspoken, repercussion of the embargo was that the population would eventually rise up to overthrow or call for the overthrow of the military leaders.⁵⁰⁸ Throughout Haiti's two hundred year history, there had never been an opportunity for the majority of Haiti's population to create any semblance of a political network.⁵⁰⁹ The political network available, consisting primarily of the Catholic church as the population's voice, was decimated by years of repression by the Duvalier regime and by the political chaos following his overthrow. Those Haitians who wanted to overthrow the *de facto* government had no way of doing it: there was no organization or network available to undermine the Haitian military. The policy therefore, of using the sanctions as a tool to incite the population to action was not a valid or realistic one.

The U.N. monitoring, exemption and oil disbursement systems also had a number of flaws.⁵¹⁰ By trying to adhere to the measures called for by the Security Council resolutions,⁵¹¹ the Sanctions Committee established guidelines which in theory remained true to the legal framework of the resolutions but which in reality wreaked havoc among the humanitarian assistance programs. The Sanctions Committees are by nature governmental and not humanitarian and the Committee in charge of monitoring the Haitian sanctions episode did not consider the impact the sanctions had on humanitarian assistance.

The legal framework in place under the U.N. Charter legislating the use of sanctions is flexible enough to accommodate as

507. See *supra* note 312 (stating that Dominican Republic supplied estimated 30% of Haiti's oil supply in 1994).

508. See ECONOMIC SANCTIONS RECONSIDERED, *supra* note 103, at 38 (observing that one objective of sanctions is to destabilize the regime in place).

509. See *supra* notes 171-213 and accompanying (discussing Haiti's social and political history).

510. See *supra* notes 368-77 (analyzing problems in exemption and fuel disbursement systems).

511. See *supra* notes 259 and 290 (listing measures called for by Security Council Resolutions 841 and 917).

unique a scenario as Haiti's. The United Nations' weakness, however, lies in the practical aspects of sanctions, notably their implementation. As Haiti's case illustrates, the United Nations was unprepared to properly deal with sanctions.⁵¹² While the U.N. Charter provides for the protection of the sender states under Article 50, it does not foresee the impact sanctions will have on the targeted state. Arguably, Article 55 is to targeted states, what Articles 50 and eventually Article 49 are to sender states. The United Nations should use Article 55 to direct its sanctions policy toward targeted states. Article 55 sets out economic and social development goals⁵¹³ that are easily impacted by sanctions. The sanctions imposed on Haiti did not foster stability and well-being, nor did they promote higher standards of living, full employment, economic development, or social progress. Rather, the sanctions had a reverse effect and required the international community to intervene following the lifting of the sanctions and lend over US\$200 million to Haiti.⁵¹⁴ Had the United Nations used Article 55 as a guideline, the organization could have reacted early on to the deleterious effects of the sanctions. Moreover, the institutional framework implementing Article 55⁵¹⁵ proved to be a much more realistic assessor of the impact of sanctions than the Security Council's Sanctions Committee. The Specialized Agencies in Haiti worked in the field and witnessed first hand the effect of the embargoes and the reality of overcoming bureaucratic obstacles to bring in goods to Haiti despite the embargo.

A number of general conclusions on the effect of sanctions can be drawn from Haiti's case. The breakdown or non-existence of the state exacerbates the effect of an embargo.⁵¹⁶ Haiti had an impoverished and unhealthy population⁵¹⁷ and had virtu-

512. See *supra* notes 389 and 467 and accompanying text (discussing the need to increase humanitarian assistance to Haiti to lessen impact of sanctions on Haitian population).

513. See *supra* note 22 (citing Article 55 of U.N. Charter).

514. See *supra* note 414 (reporting on multilateral aid given to Haiti following lifting of sanctions and removal of military government).

515. *Supra* notes 56 and 72 and accompanying text (describing ECOSOC and Specialized Agencies that help pursue objectives called for under Article 55).

516. See *supra* notes 403-4 (describing lack of services provided by Haitian government and void filled by non-governmental organizations and Specialized Agencies).

517. See *supra* note 363 (detailing effect of disintegration of state on development and humanitarian assistance during embargo).

ally no social services to mitigate the effects of the sanctions.⁵¹⁸ The effect of the embargo was poorly distributed, because of badly targeted sanctions.⁵¹⁹

An oil embargo is an extreme measure and should be carefully thought out before being implemented. The United Nations incorrectly assumed that the majority of Haiti's population would not be heavily affected by fuel shortages, particularly if humanitarian assistance programs continued to have enough fuel.⁵²⁰ Tying humanitarian fuel into the sanctions program immediately turned humanitarian fuel into a political instrumentality and made it susceptible to misuse by the *de facto* authorities.⁵²¹ Secondly, the humanitarian fuel and assistance distribution network could not meet all needs. Regions where the state as opposed to NGOs were the primary health care provided found themselves lagging behind.

In addition, those who planned out the sanctions underestimated the resourcefulness and wealth of the elite in circumventing the embargo. Two hundred years of *coups d'états*, uprisings, dictators, and absent governments⁵²² will fine tune the target's coping mechanisms. The Haitian elite proved time and again that there are always substitutes for embargoed goods.⁵²³ The porosity of the Dominican Republic's border, allowed for fairly easy access to gasoline.⁵²⁴ Furthermore, wealthy Haitians only had to get on a plane and fly to Miami to do their shopping.⁵²⁵ The elite also had enough U.S. dollars to buy whatever else it needed on the black market.⁵²⁶

518. See *supra* notes 171 and 387 (setting forth economic and health status of Haitian population).

519. See *supra* notes 447-66 and accompanying text (outlining effects of U.N. sanctions on majority of Haitian population).

520. See *supra* note 314 and accompanying text (describing humanitarian fuel distribution system).

521. See *supra* notes 364-67 and accompanying text (discussing use of humanitarian fuel by *de facto* authorities as leverage to gain political legitimacy).

522. See *supra* notes 171-213 and accompanying text (outlining Haiti's turbulent social and political history).

523. See *supra* notes 414, 432-41, and 448-50 and accompanying text (discussing emergence of black market and success of Haitian elites in avoiding effect of embargo).

524. See *supra* notes 432-46 and accompanying text (analyzing crossborder trade of fuel during embargo).

525. See *supra* notes 448-50 and accompanying text (reporting that sanctions did not stand in way of wealthy Haitians).

526. See *id.* (discussing wealthy Haitians circumventing embargo and buying and selling black market goods).

Therefore, in order to implement an effective sanctions episode, the United Nations should have taken into account relevant characteristics of the targeted group and general socio-economic indicators. Such characteristics include the amount of money and time the elite can expend to circumvent the embargo and the goods and benefits that matter to wealthy Haitians, such as visas to the United States and U.S. bank accounts. Moreover, the poorer a country, the harder it is to create and implement an embargo: the poverty of the country also contributes to the emergence of informal sector substitutes for embargoed goods.⁵²⁷ A less developed country tends to have an extensive informal sector, which combined with the resourcefulness of the local population, would diminish the intended impact of the sanctions.⁵²⁸ If the country's trading ties are meager or if large segments of the population are extremely poor, the sanctions need to be micro-surgically targeted in order to prevent the wrong segments of the population from getting hurt. The United Nations needs to analyze the situation before applying the sanctions, rather than after imposing a general set of sanctions, as in the case of Haiti.

Politically, sanctions may be inexpensive. Although referred to as foreign policy on the cheap,⁵²⁹ sanctions are extremely expensive economically to the sender countries, the targeted country, and eventually the United Nations.⁵³⁰ In Haiti's case, the sanctions hastened the destruction of Haiti's economy,⁵³¹ impeded the humanitarian assistance programs,⁵³² created economic refugees⁵³³ and jeopardized human lives.⁵³⁴

527. See, e.g., *supra* notes 437 and 445 (illustrating how black market in Haiti built itself up during embargo on existing network of informal sector).

528. *Id.*

529. See *supra* note 104 (referring to sanctions as popular policy tool because of low costs to sender states).

530. See *supra* note 467 (reporting on payments by United Nations to mitigate impact of sanctions).

531. See *supra* notes 414-32 and accompanying text (setting forth effects of sanctions on Haitian economy).

532. See *supra* notes 353-86 and accompanying text (analyzing effects of embargo on humanitarian assistance programs).

533. See Jones, *supra* note 258 (positing that refugees fleeing from Haiti were considered primarily as economic refugees and therefore were not granted political asylum).

534. See *supra* notes 387-90 and 400-2 and accompanying text (analyzing effect of embargo on health programs).

It is crucial when imposing multi-tiered sanctions, to keep the humanitarian assistance as a separate entity. The single biggest avoidable mistake the United Nations made was to turn humanitarian assistance into a political instrumentality.⁵³⁵ By politicizing humanitarian assistance, donors and the United Nations eliminated the appearance of neutrality, and eventually impeded the assistance programs.⁵³⁶ Particularly in a circumstance such as Haiti, where the international community was trying to isolate the *de facto* regime diplomatically,⁵³⁷ the United Nations should have recognized the hazards that lay ahead, and the importance of maintaining a neutral and impartial assistance program. When trying to gain international recognition, the *de facto* authorities tried every means available, including denying exemptions,⁵³⁸ even on humanitarian grounds. The larger issue would be whether the degree of diplomatic isolation was necessary in Haiti's case. Former President Carter, who had become a recognized expert on negotiating with pariah regimes,⁵³⁹ was sent down to Haiti to negotiate with the military triumvirate, because the international community had effectively severed all political and diplomatic ties with the regime,⁵⁴⁰ thereby eliminating any basis on which to reach a settlement. Therefore, the United Nations should take the lesson to heart, that before it diplomatically and politically isolates a renegade regime, the organization should ensure that the humanitarian assistance programs be fully protected from the political aspects of the sanctions episode.

The immediate purpose of the sanctions in Haiti was to make the military triumvirate step down.⁵⁴¹ Undoubtedly, sanctions were not the right tools to use in Haiti's case. A surgical

535. See *supra* notes 364-67 and accompanying text (detailing use of humanitarian fuel by *de facto* Haitian authorities to gain diplomatic recognition).

536. See *supra* note 362 (positing that withholding of humanitarian aid by international community to *de facto* government ministries destroyed appearance of neutrality of humanitarian assistance).

537. See *supra* note 241 (arguing that one of objectives of sanctions in Haiti was to isolate and delegitimize *de facto* government).

538. See *supra* note 365 (discussing withholding of tax exemptions by *de facto* government in order to gain recognition).

539. See *supra* note 8 (listing regimes former President Carter had negotiated with).

540. See *supra* note 241 (setting forth objectives sanctions imposed on Haiti sought to achieve).

541. *Id.*

military intervention, done early on in the crisis, at the request of Aristide, would have been a quicker, cheaper, and less destructive option than sanctions.

B. Sanctions' Long Term Effect and Article 55 of the U.N. Charter

Sanctions are only temporary tools⁵⁴² and in theory should only have short term effects. Yet few economies and societies are resilient enough to bounce back from a near total embargo such as the one imposed on Haiti. Sanctions will necessarily have negative short term effects, such as an increase in food prices.⁵⁴³ Senders of sanctions need to avoid the long term effects in order to prevent the deterioration of the target's economy and eventually of the target's society. In order to do this, one needs a better understanding of the environment targeted by sanctions. For this, Article 55 provides useful guidelines.

Although Article 55 was not intended to apply to a sanctions episode,⁵⁴⁴ it is worthwhile considering. The Article is couched in fairly general terms yet it has set the direction the United Nations has taken in terms of development and human rights.⁵⁴⁵ Article 55 delineates elementary standards and the United Nations should take them into consideration before applying sanctions. Assuming that the target is a developing country trying to achieve the objectives set out in Article 55, the United Nations would be less likely to impose a haphazard embargo, by using Article 55 as a guideline. The organization would have to first assess the socio-economic status of the target and determine what type of sanctions would cause the least damage to the target's development. The Specialized Agencies could do for Article 55 what the U.N. Secretary-General foresaw the Bretton Woods institutions⁵⁴⁶ would do for Article 50, notably form a mechanism to assess impact of sanctions prior to their implementation, to monitor application of the sanctions, minimize

542. See *supra* note 346 (quoting Security Council members' discussion on sanctions being short term tools).

543. See *supra* note 393 and accompanying text (reporting on increase in food prices during embargo).

544. See *supra* note 43 and accompanying text (setting forth the purposes of Article 55).

545. U.N. CHARTER art. 55, *supra* note 22.

546. See *supra* notes 77-81 and accompanying text (outlining role of Bretton Woods institutions).

sanctions' collateral damage, and ensure delivery of humanitarian assistance.⁵⁴⁷ The Specialized Agencies are in a better position to carry out the task since they have personnel directly involved in the target country.⁵⁴⁸ By virtue of their work with NGOs, experts, and local ministries, the Specialized Agencies are the best available means to assess the potential impact of sanctions.

Whereas the Secretary-General considered one mechanism to monitor both targeted and sender states,⁵⁴⁹ it would be better to have two separate entities to fulfill the two distinct roles. To monitor the conditions in the targeted state, ECOSOC would be the best venue. Without amending the U.N. Charter, ECOSOC could establish the mechanism to monitor the targeted state by creating a sub-commission pursuant to Article 68 of the U.N. Charter.⁵⁵⁰ ECOSOC is in an excellent position to play this coordinating and monitoring role because, pursuant to Article 71 of the Charter,⁵⁵¹ it can make arrangements with NGOs, regional and other international organizations, and the Specialized Agencies.⁵⁵² In Haiti's case the agencies and organizations working in Haiti had the best information,⁵⁵³ the most constructive comments,⁵⁵⁴ and the most relevant input, thereby proving their usefulness in helping to monitor the impact of sanctions on the target's population. If the ECOSOC option is to be a viable option, however, there needs to be an uninterrupted two-way line of communication between the suggested mechanism and the Security Council, which is partially provided for under Article 65 of the Charter,⁵⁵⁵ to facilitate the transmittal of information and

547. See SUPPLEMENT TO AN AGENDA FOR PEACE, *supra* note 11, ¶ 75 (proposing that Bretton Woods institutions could provide monitoring capacity for Article 50 relief).

548. See *supra* note 72 (setting forth Specialized Agencies functioning in Haiti during embargo).

549. See *supra* note 547 and accompanying text (setting forth alternative proposed by Secretary General).

550. See *supra* note 57 and accompanying text (discussing Article 68 and role of ECOSOC).

551. See *id.* (outlining Article 71 of Charter).

552. See *supra* note 72 (positing that UNDP is in unique position to respond to changing domestic situations).

553. See *supra* note 369, and notes 387-89 (illustrating importance of information collected by U.N. agencies and NGOs working in Haiti).

554. See, e.g., *supra* note 389 (testifying as to impact of sanctions on food distribution programs).

555. See *supra* note 57 and accompanying text (citing Article 65 of U.N. Charter).

the results of the monitoring.

Finally, while humanitarian crises test the DHA,⁵⁵⁶ the DHA has yet to produce a viable consensus among the Specialized Agencies and the NGOs to facilitate humanitarian assistance during an embargo. Logically, sanctions should not necessitate the level of humanitarian assistance as do other forms of intervention such as peace-enforcement, for example. Sanctions, however, as Haiti illustrated,⁵⁵⁷ might eventually necessitate some form of humanitarian assistance. The DHA, therefore, should have the capacity to respond to humanitarian crises during a sanctions episode. A separate entity that focuses solely on sanctions' impact under the auspices of the DHA, would both strengthen the use of sanctions as a policy tool by the United Nations, and prevent the dilution of humanitarian assistance.

C. *The Proper Use of Sanctions by the United Nations*

The United Nations was created to fulfill two roles, notably, to provide a peaceful and secure environment in the present and to create the institutions, relations, and environments for sustainable peace and security in the future.⁵⁵⁸ Sanctions, if drawn out, can unfortunately exacerbate the dichotomy between the two roles. Proper assessment and monitoring mechanisms prior to and during the sanctions' implementation, would mitigate the potential contradiction between the United Nations' two roles, as would a well-planned out exemption policy. Furthermore, increasing the cost of sanctions for sender states would force those states not to apply sanctions lightly. Finally, the United Nations needs to modify its *modus operandi* when taking Chapter VII action.

There are a number of procedural issues the newly created monitoring mechanism could focus on to make sanctions an effective tool and a viable alternative to the use of force. One is to target the sanctions properly by getting a good grasp of the social, economic, political and eventually historical factors at work in the target country.⁵⁵⁹ A second approach could consist of

556. See *supra* note 68 and accompanying text (setting forth purposes of Department of Humanitarian Affairs).

557. See *supra* notes 354-55 and accompanying text (discussing need for increased humanitarian assistance in Haiti during sanctions).

558. See *supra* notes 38-40 (setting forth objectives of United Nations).

559. See *supra* notes 347-467 and accompanying text (positing that United Nations

monthly assessment reports on traditionally vulnerable groups such as women and children.

A clear and concise exemption policy is necessary to assure the provision of basic goods and assistance to the target's population during a sanctions episode. For instance, a process to review exemptions managed by personnel who are qualified to review humanitarian assistance requests, blanket waivers, or the arrangement of charter flights and/or boats to bring supplies in on a regular basis, would expedite humanitarian assistance. The exemption policy should also facilitate the process for NGOs so that they can apply directly to the United Nations and not through their governments. Finally, the exemption policy should also include better coordination in New York between the DHA, the Specialized Agencies, the Security Council and the newly created monitoring mechanism. A well-planned out exemption policy and process would help improve the use of sanctions, by allowing food and other supplies to get to the target state in an expeditious manner, despite the embargo.

Generally, sender states should not apply sanctions lightly and indiscriminately. If the cost of sanctions on the sender countries were raised, it would lessen sanctions' appeal to the sender countries. The senders' stakes could be raised by forcing them to create an effective monitoring mechanism to monitor the impact of the sanctions on the target state's population or by forcing the sender states to pay a share of the humanitarian assistance. Their amount of humanitarian assistance would be proportionate to the loss their sanctions inflicted on the target country.

The United Nations retains a Cold War mentality in the sense that the organization still tends to view the relationship between the diplomats, the lawyers, the strategists, operations, and the tactical levels as sequential rather than interrelated.⁵⁶⁰

imposed sanctions on Haiti without first thoroughly analyzing Haiti's socio-economic and political climate).

560. See General Gordon Sullivan, *Ethnic Conflicts: Challenges for the U.S. Army*, in *ETHNIC CONFLICT AND REGIONAL INSTABILITY: IMPLICATIONS FOR U.S. POLICY AND ARMY ROLES AND MISSIONS*, 3, 8 (Robert L. Pfaltzgraff and Richard H. Shultz, eds., 1994) (positing that

[a] simplistic view of decisions to use force defines the relationship between the political and the military as sequential. First, we determine our political objective, and then the military commander applies force to achieve it. This

One of the primary changes in international relations since the end of the Cold War is that these four levels are much more closely linked.⁵⁶¹ The United Nations has yet to apply this new mentality and remains inflexible particularly in the implementation of its Chapter VII actions.⁵⁶² The hierarchy among the various actors is still too formal and political and tends to omit key players such as the NGOs. Had the United Nations been more flexible in its policy toward Haiti, allowing for more participation in the policy-making process by the Specialized Agencies and the NGOs, the sanctions policy might have been more effective and less drastic than it turned out to be.

CONCLUSION

Sanctions did not solve Haiti's crisis but they might work elsewhere if properly implemented. The Haitian sanctions episode taught a number of invaluable lessons for the future use of sanctions. For an effective sanctions episode the United Nations cannot ignore the political and socio-economic climate of the targeted country. In Haiti's case, the United Nations observed the legal formalities for implementing sanctions pursuant to the framework set out in the Charter. Yet the organization virtually ignored Haiti's socio-economic history despite the obvious poverty of the country. Sanctions are effective as short term, superficial, and targeted instruments. They are not effective in resolving systemic ills which remain Haiti's main problem. In addition, in Haiti's case, the overarching sanctions policy gradually widened to include a variety of objectives. The initial goal was to send the military to the negotiating table. Eventually the sanctions became not only a behavior modifying instrument but also a punishment. Because they were comprehensive, the sanctions against Haiti deliberately or mistakenly affected all aspects of Haitian society, politics, and economy. In the event that sanctions become a long-term fixture in a given U.N. policy, it is vital that the United Nations respect the legal framework and ensure that there is a monitoring mechanism to assess the targeted

model has served us well; but perhaps it is a model that does not capture the necessary reality of this type of conflict [intra-state conflict].)

561. *Id.*

562. See *supra* notes 305-13 and accompanying text (detailing how United Nations used Security Council and Sanctions Committee rather than other institutions to monitor implementation and effect of sanctions).

state's environment. The United Nations should use Article 55 of the Charter as a barometer to measure the amount of pressure it needs to apply in a sanctions episode. Article 55 requires the United Nations to create a sustainable development policy and the sanctions applied under Article 41 of the Charter should not undermine that duty. Moreover, without amending the U.N. Charter, the United Nations can establish an effective monitoring mechanism with the help of ECOSOC, the Specialized Agencies, and NGOs. The United Nations should uphold Haiti as a standard of how and when not to apply sanctions so that, at the very least, Haiti's population did not suffer in vain during the embargo.